

LAW RELATING TO
THE PROTECTION OF
THE ADMINISTRATION
OF STATES IN INDIA

BY

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WITH A FOREWORD BY

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Foreword

THE Editors of this publication have asked me to write a foreword for it, and after reading the work in proof, I am very glad to do so. The idea of the book is to elucidate the position of British Indian Law in relation to the regulation of criticism of the Rulers and Administrations of the Indian States, and the purpose is wholly admirable. The application of the Acts concerned is of too recent date to have meanwhile built up a groundwork of case or customary law which will cover every sort of case which might arise for adjudication under them, but a beginning has been made and the publishers have made a valuable contribution to those concerned in such matters by indicating how the Acts have been applied to date. But with regard to the Government of India Act, 1935, the commentaries and *obiter dicta* of certain outstanding figures have been used in lieu of any decided cases, for the simple reason that no cases under it can yet have arisen. The interpretation of any aspect of the Act is, therefore, worth only what an extra-legal

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comment connotes, and can have no force in law. The Federal Court only, when it in fact functions, can be in a position to interpret the Act, and only its decisions will have legal force. It is, therefore, well to regard any commentary upon the Act or with respect to its formulation, with the reserve which an unexplored subject must require.

The survey of relations of the Paramount Power with the States has been adequately outlined and explained and those whose duty it may be to argue a case will, upon studying this work, have an opportunity of acquiring a valuable perspective which is too often lacking in those who are inclined to take for granted things as they are without troubling about the historical and political conditions which led up to them.

Those who wish to study the legislation with which this work is concerned will find it a valuable adjunct to their library, and I am sure they will gladly acknowledge the industry with which the authors have carried out their plan.

HAROLD WILBERFORCE-BELL.

Preface

THE prospect of an All-India Federation has naturally focussed the public mind both in British India, as well as in the Indian States on the complex legal-cum-political position of the States in the future polity of India. The complexity of the problem is evident from the fact, that although the Government of India Act, 1935, embodying the scheme of Federation has been on the Statute Book for more than three years and its Part III (relating to Provincial Autonomy) has been in actual operation since April 1937, yet neither the Princes nor the politicians in British India, have so far been able to finally make up their minds regarding their partnership in the proposed Federation. This treatise is an attempt to put in a readable form the existing statutes (both Imperial and Indian) concerning the Indian States. The issues discussed in the book are not merely of theoretic interest, but are of great immediate practical importance. This book, therefore, would be found useful by lawyers, constitutionalists and the general public alike.

The first part of the book gives a general survey of the relations between the Indian States and the Government of India from 1600 to 1935.

The second part deals with the two Acts of the Central Legislature, designed to protect the administration of Indian States from external (British Indian) interference. This sub-

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ject has become of great importance, in view of the wide-spread political awakening amongst the subjects of Indian States and the sympathy shown by the people of British India with the aspirations of people in the States. I have, however, confined myself to the elucidation of the legal aspects of the different provisions of these Acts, in the light of the interpretations put upon them by the courts.

The third part begins with a brief sketch of the evolution of the idea of an All-India Federation and the difficulties in the way of its early realisation. Thereafter are set forth the provisions of the Government of India Act, 1935, relating to the accession of the Indian States to the Federation. Copious notes have been given to explain the various provisions of the Act. In the absence of any decided cases under the Act, I have been obliged to quote freely from the Report of the Joint Select Committee, to elucidate the principles and ideas underlying the various sections of the Act. These quotations, while having no force in a court of law, would, however, provide a background to the readers, which would greatly help them in understanding the purposes of most of the sections of the Act.

The fourth part contains very useful Appendices, *e.g.*, Letters Patent passed under the Great Seal of the Realm constituting the office of Governor-General of India, instruments passed under the Royal Sign Manual and Signet to the Governor-General of India, Instruments of Instructions to the Governor, the Government of India (Federal Court) Order 1937, the Federal Court Act, 1937, Rules of the Federal Court, Questions asked by the Marquess of Salisbury on the

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position of the States in the Federal Finance Scheme of the White Paper, and replies thereto by the Secretary of State for India, etc.,. It is hoped that this work will prove of immense value to all concerned.

I must not be tardy in acknowledging in full measure the invaluable assistance that I have received from Mr. H. L. Sarin, B. A., LL. B., Advocate, High Court, Lahore, and Mr. Madan Lal Mehra, B. A., LL. B., Pleader, but for whose tireless energy and vigilant supervision, this work would not have been made available to the readers. My collaborators rendered me valuable assistance in the preparation, printing, and publication of the book. I have always found their suggestions extremely useful.

I cannot sufficiently express my gratitude to the Hon'ble Sir Harold Wilberforce-Bell, Resident for the Punjab States, for very kindly associating himself with this book and having given me the encouragement which I needed, by writing a foreword. That this work should have commended itself to the Hon'ble the Resident so as to win his consent to the writing of a foreword is extremely flattering.

K. N. CHOPRA.

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PART I

LAW RELATING TO THE PROTECTION OF THE ADMINISTRATION OF STATES IN INDIA

PART I.

A SURVEY OF THE RELATIONS

between

THE INDIAN STATES AND THE GOVERNMENT OF
INDIA (1600—1935).

THE subject of the Indian states has been of great importance in the study of modern Indian history, and has always commanded great attention. Broadly speaking, any survey of the problems which the existence of the states and their relationship to the British Government has given rise to, must be divided into two main parts. In the first place it is essential to understand how the Indian States came into being. The range of this earlier historical survey extends from the beginnings of the British power in India to the occurrence of the Indian Mutiny. Secondly, we are required to make a careful study of the policy which has been adopted since the Mutiny and which has gradually placed the Indian States on the footing which they occupy today.

The English East India Company had not been very long in this country when the Mughal political system began to decay. The history of the first half of the eighteenth century fully illustrates the speed with which decadence was accelerated. The Imperial Government of Delhi, weakened and torn by party strife at the

capitulated, became more and more incapable of exercising any effective control over its provincial Governors, who set themselves up in varying degrees of independence according to their particular circumstances. Naturally there could be no set process for this centrifugal tendency. Some writers have described it with good reason as a period of political anarchy and confusion. Those who are familiar with the course of Indian history know quite well that such conditions have obtained in this country between the period of the decline of one empire and the emergence of another. The extent and power of a newly-established empire have depended on the success with which it has been able to attack the independent state system. The process was repeated even in the eighteenth century. But this time the founders of the new empire were Europeans. The Portuguese, dominant in the east during the sixteenth century, had lost their power to the English and the Dutch. The latter, in the hey-day of their maritime commerce and power during the seventeenth century, fortunately concentrated more on the spices and the East Indies, with the result that the English found the French to be their only rivals for power in India. Part of this duel between the English and the French was fought as a side-issue of the Carnatic War in the south, the Europeans ranging in opposing ranks to help the rival claimants to the Nawabship of the Carnatic. The actual part of the struggle was, however, fought between the English and the French as subsidiaries in the war which was waged round the Subedari of the Deccan. The Seven Years' War was fought between these two European powers in both the Hemispheres. Before this war ended in 1763, the English had already won a position of supremacy and the French had ceased to make a serious bid for the empire of India. But the English position was far from being well-established. The English East India Company had no doubt obtained a hold on the Nawab of Bengal, but for various reasons it was unable to

assume full governing authority. The Company's government still recognised, by the use of formal phrases, the sovereignty of the Mughal Emperor of Delhi. This position changed gradually under Lords Cornwallis and Wellesley. After the capture of Delhi in 1805, the Emperor's authority was confined to his palace and its environs. The attitude of the European powers also underwent a change after the Vienna Settlement and they now began to recognise that the King of England was sovereign in the Company's territories in India. Lord Moira's desire to turn the British Government in India into the British Government of India was successfully achieved when the Maratha Confederacy was finally broken up. The natural result of these changes in the position of the Company was that it gradually asserted its position in regard to the Mughal Emperor, who, after Lord Emherst's time, was given the position of an equal, not a superior. After 1835 the Company struck no more coins bearing the imperial titles of the Emperor. Lord Canning's decision to end the imperial title with Bahadur Shah's death was followed by the Mutiny and the trial, deposition and internment of the Emperor. After this the sovereignty of the British Government stood unchallenged.

This important change in the position of the East India Company had been brought about by its gradually increasing importance among the Indian political powers. The expansion of British influence and territory came not as a result of a settled policy of conquest, but as a result of the political and diplomatic circumstances of the latter portion of the eighteenth and the beginning of the nineteenth centuries. The Pitt's India Act of 1784 had declared that it was repugnant to the wish of the British Government to conquer more territory than it possessed in 1784. In pursuance of this resolution attempts were undoubtedly made to follow the policies of non-intervention and balance of power, but it was soon found that the former policy would only result

in the increased power of the aggressive Indian rivals and the latter was futile owing to the unstable and fluctuating political condition of the country. India was passing through political changes and the boundaries of the various powers were in a liquid state and it was impossible to maintain a diplomatic balance. Consequently we observe that after every few years British territory and influence were extended. Lord Cornwallis conquered half of Mysore even when he had come out as a determined follower of the policy of non-intervention. And Lord Wellesley not only wiped out the independent state of Mysore but also resolutely pursued the policy of asserting British supremacy through his subsidiary alliances and brought a number of leading Indian powers including the Marathas on a treaty-basis which clearly signified that the British Government was already the most important of the Indian powers. Wellesley's determined policy suffered a temporary check but was once again renewed with greater zeal and vigour by Lord Hastings who set out to make the British Government in India supreme in effect as well as in name. With the fall of the Marathas in 1818 the Company's power stood unchallenged in India. Further warfare was waged in the North Western territories, in Afghanistan, Sindh and the Punjab, and also in Burma, and additions of territory were consequently made. Additions were also made by other methods to which we shall refer again, till in 1857, the East India Company stood as the master of a great portion of the Indian territories. The political map of India was already complete, red in most places with large or small patches of yellow representing the Indian States which had survived political extinction. We shall now study how these Indian States came into being and how their relations were regulated with the British Government.

Treaties are necessary between states for the regulation and maintenance of interests. The volumes of Aitchison's Treaties,

Engagements and Sanads are a storehouse of information on the treaties formed between the British Government and the Indian powers, great and small. The earlier treaties were designed to secure the protection of maritime and commercial interests. The protection of commerce also led to the acquisition of sites for the building and fortification of factories. Troops originally necessary to safeguard commercial interests were later required to keep down the power and influence of European and Indian rivals. Dupleix is usually credited with the conception of building a French empire in India. The British were not going to let this idea materialise. In the conflict which followed the Europeans fought as auxiliaries of Indian powers hoping only to advance their interests against their rivals. With the defeat and disappearance of the French from the larger Indian stage in 1763 the relations of the English with the Indian powers entered into a new stage.

The relations of the British Government with the Indian States have been very appropriately divided by Lee Warner into three phases. The first period during which the policy of ring-fence was generally followed extended up to 1813. From 1813 up to the Mutiny in 1857 the policy of subordinate isolation was pursued. Since 1858 the policy of subordinate alliance has been followed. The first period which ended in 1813 has been described as a period during which the policy of ring-fence was followed as a governing principle. The Company's government was not aggressive, nor did it wish to acquire more and more territory. It was willing and anxious to maintain a policy of non-intervention in the affairs of the Indian powers outside the ring-fence it had set up. And if it departed from that policy under the pressure of the Indian political situation it did so with the greatest caution and reluctance. For it is true that many times its hope 'that the stronger organisations would absorb the weaker and become settled states' was not fulfilled. The politi-

cal confusion and anarchy which raged outside the limits of its territories obliged it to set aside the policy of non-intervention. Again foreign invasion from land or sea was another factor which obliged it in self-defence to deviate from its settled course and make alliances against any dangerous possibilities of unsettlement. The history of the wars and treaties of this period amply bears out these remarks.

With the grant of the Diwani of Bengal, Bihar and Orissa in 1765, the position in Bengal took one long step towards the logical end which Clive's victory over Siraj-ud-Daula had brought within sight. The defence of Bengal definitely required a diplomatic understanding with the British neighbour, the Nawab Wazir of Oudh. Clive's treaty of 1765 with Oudh was important in so far as it initiated the policy of ring-fence which the Company followed with a few exceptions till 1813. The Company would let the Marathas and others go on disturbing the Indian world and would only concern itself with defending its own interests. Oudh was regarded as buffer state which would act as a barrier against the undefined extension of Maratha influence and power. The Nawab Wazir also gained in some ways by the British friendship, but as early as 1775 the heavy expenditure he incurred on British troops to be maintained in his territory put him in arrears and led to mismanagement. The Company's government protested against this mismanagement but took no steps to lighten the financial difficulties of the Nawab Wazir caused by the heavy military expenditure. In 1799 Lord Wellesley decided not to use Oudh as a buffer state and acquired certain territories to the east of Oudh which lay directly exposed to attack. Oudh was weak and mismanaged and its army was inefficient. Northern India stood in danger of Zaman Shah's invasion from the north west. He therefore obliged the Nawab Wazir of Oudh by the Treaty of 1801 to cede to the Company lands in the Doab and the whole of Rohilkhand yielding an an-

nual revenue of Rs. 1,35,23,474 in lieu of the subsidy and all military expenditure incurred in the defence of Oudh. Lord Wellesley's treatment of Oudh shows how important the British Government already was and how easily it could obtain any alteration in its treaties if the changing political situation required.

The history of the political development and treaties of Southern India followed a more difficult course owing to the presence of strong European rivals in the French and the existence of three bigger Indian powers, namely Mysore, the Marathas and the Nizam. The first two of these were potentially stronger than the Nizam and were also determined to make a positive bid for political leadership in the south. We find therefore that the Nizam realised quite early in the struggle that his future security was bound up with the British Government.

The Carnatic and Deccan wars kept the political and diplomatic condition of Southern India in a state of turmoil in which there was no room for the adoption of the policy of ring-fence. The leading southern powers like the Nizam, Haidar Ali and the Peshwa made rapidly shifting alliances to defend their territories or to extend their powers. There could be no question of establishing a buffer state as was done in the north. A very important result of the Anglo-French struggle was that the Nawab of the Carnatic came under the protection of the British much to the distaste of the Nizam and Haidar Ali. This position in the south brought about wars against Mysore the first two of which were waged without much advantage to the British. Hence when the Third Mysore War became a necessity, Lord Cornwallis first made his famous Triple Alliance with the Marathas and the Nizam. This alliance was a master-stroke of policy. Mysore was beaten and its territory was reduced by one half. Still however, its ruler, Tipu Sultan continued vigorously to entertain the idea of a French alliance. Wellesley soon understood on his arrival in

India that he must reduce the power of Mysore before the French gave it any help. So he made his famous alliance with the Nizam in 1798. The Nizam agreed to disband his French corps and the British Government undertook to arbitrate between him and the Marathas, or, if the Marathas were not agreeable, to protect his interests against the Marathas. The war against Mysore was pushed forward with the assistance of the Marathas also, though at its conclusion, they refused to partake of any conquered territories because they were reluctant to form a subsidiary alliance. The Nizam's share of Mysore conquests was taken away from him by the Treaty of 1800 which guaranteed to defend the Nizam against all aggression (of the Marathas). The Nizam thus definitely came under the protection of the British Government. The Muslim Kingdom of Mysore did not exist any longer. The whole administration of the Carnatic was taken over in 1801, the Nawab being pensioned off. Only the Marathas remained to be brought into alliance. They might have resisted any such attempts, but their internecine quarrels soon made such a treaty possible in 1802. The Peshwa Baji Rao fled from Poona after his and Sindhia's forces were completely routed by Jaswant Rao Holkar and at once formed the Treaty of Bassein with the British. In return for a contingent force he agreed to cede certain territories and also consented that the British Government might become a referee in all disputes between him and the Nizam or the Gaekwar. The Treaty of Bassein sowed the seed of dissension among the Marathas and obliged them to enter into conflict with the Company's power, which took forward one step after another and ultimately destroyed all hope for the building up of an independent Maratha power. The acquisition of Delhi by the Treaty of 1803 with Sindhia opened up fresh possibilities. Hitherto the Jamna had been regarded as the Western Frontier of British influence. The possession of Delhi made the Oudh buffer policy completely out

of date. The British were no longer in danger of attack from the decadent Marathas, but the possibilities of an overland invasion from the north west backed up by the European powers like France and Russia filled their minds, and led to the attempts to establish political relations with the Court of Lahore, the Amirs of Sind, the ruler of Kabul and the Shah of Persia. The most consequential of all these alliances was formed with Ranjit Singh, who by the Treaty of 1809, agreed to regard the Sutlej as his southern boundary provided he was allowed to conquer unmolested the lands to the north of that river.

The above review of the Territorial expansion of the East India Company shows that the British Government was very reluctant to increase its responsibility of direct government and attempted, as far as possible, to stabilise the Indian political situation by forming treaties of alliance with certain Indian powers of the country situated in its ring-fence or on its borders as the situation required. Four treaties out of the whole lot deserve a recapitulatory reference, the Triple alliance of 1793, the Treaty with the Nizam of 1798, the Treaty of Bassein of 1802 and the treaty with Ranjit Singh of 1809. A review of these political relationships up to 1813 indicates that treaties were made on an equal and independent basis and were originally governed by considerations of reciprocity. Later on, however, the Company began to assert its superiority by employing the system of subsidiary alliances and by requiring its allies to enter into no foreign alliances with powers in and outside India except through the British Government. This was by no means an ideal system. The allied states disliked it as a danger to their independence, and their subjects disliked it as a system which was likely to protect and perpetuate misrule. For the princes in subsidiary alliance were assured that no interference with their internal administration was ever contemplated.

The second period extending from 1813 to 1857 is even more

remarkable from the point of view of treaties with the Indian states, as during this period a different policy was adopted towards them politically. Cornwallis's policy of non-intervention was given up, as no strong states could be created beyond the company's territories and the idea underlying Lord Wellesley's subsidiary treaties was developed. Lord Hastings (1813-23) was opposed to the policy of annexation as much as he was to that of non-intervention. He believed that the proper relation of the Indian States with the British Government should be determined by what might be described as the policy of 'Isolation and Sub-ordinate Co-operation.' The Indian States must not get into touch with one another for offensive or defensive purposes. At the same time every Indian State should become a subordinate ally of the British Government which should be the paramount power in India. Lord Hastings administration indicates that he worked to achieve this aim. Before however we describe how Lord Hastings relinquished the policy of non-intervention and developed that of subordinate isolation we should like to point out an important exception which he made in the application of his policy. Curiously enough, the very first war, which he waged against Nepal, resulted in the treaty of Sagauli (1816) by which though the Nepal Government's foreign policy was restricted and the State was forbidden to employ any European or American subject without permission, yet it established a reciprocity in regard to accredited ministers. This feature accorded an exceptional status to the state of Nepal which has since then been maintained.

The circumstances of the Pindaris war (1816-1818) effected a remarkable change in public opinion in England. It was now generally recognised that the policy of ring-fence had resulted in making the Pindaris audacious indeed. The British Government had declared by its treaties of 1805 with Sindhia and Holkar its unconcern with smaller powers of Rajputana and Central India.

In fact it left the country to the south of the Chambal to be freely disturbed by the political ambition of the Marathas leaders. The Pindaris ravaged even British territories as subsidiaries of the Marathas. The Pindari and Marathas question was one. It was necessary for the East India Company to cast off its ring-fence policy and to invade territories which had, a few years before, been excluded from its protectorate and establish British supremacy in Central India as well.

The engagement of 1817 with the Peshwa by which the Marathas Confederacy was formally dissolved was indeed important as a first step. After this the Peshwa and Bhonsla were defeated. The former became a pensioner of the Government and the latter lost a considerable portion of his territory adjoining the eastern coast. Holkar was defeated, Sindhia was bound by Treaty and both yielded to the intention of the British Government to extend its political influence over the Central India and Rajputana States which had till then been under the influence of the Marathas. The Pindaris were crushed. Amir Khan, their chief leader was made Nawab of Tonk and treaties were formed with 13 states like Bhopal, Karauli, Kotah, Jodhpur, Udaipur, Bundi, Bikaner, Kishengarh, Jaipur, Partabgarh, Dingapur and Jaisalmer and Jhalawala which were brought into the British protectorate.

In addition to these settlements with the Rajputana states over 140 chiefships were recognised in Central India and a large number in Gujrat and Kathiawar.

Lord Hastings initiated the policy of subordinate isolation. He emphasised the necessity of isolating the Indian States from one another; he showed disinclination to interfere in their internal affairs. But careful observers could foresee even in his day that a time would come when the British Government would become more powerful and it would not be afraid to encourage

co-operation among the Indian States and between them and the British Government. For the doctrine of non-intervention was fraught with disastrous consequences to the misgoverned Indian States. Though under this policy they enjoyed freedom from interference for an unduly long time yet growing misrule was bound to convince the British Government of the necessity of annexation. When non-intervention led to misrule in the Indian States and could no longer be supported as a useful political policy annexation was bound to come. In 1835 no interference was made in Holkar's territory even though mis-government existed and in 1853 no attempt was made to set right internal troubles in Bahawalpur. Annexation was made in the case of a few states like Coorg and Oudh, and others became a part of the British dominions through the operation of the Doctrine of Lapse. But even before the Mutiny came, a change was noticeable in regard to this policy of non-intervention and annexation. Lord Hardinge was stoutly opposed to creating a subsidiary state in the Punjab for he fully understood the danger of protecting Indian States and guaranteeing non-intervention in internal affairs. So when he agreed to give military help to the Lahore Durbar in 1845-46 he also undertook to supervise the reform of the Sikh Government. It might, however, be mentioned in passing that interference was resented by the Sikhs and resulted in the Second Sikh War and the annexation of the Punjab. This annexation was however made in the interest of the security of the empire against invasion from vulnerable quarters as other annexations were effected from a consideration of extending the blessings of the British rule. The doctrine of Lapse used in a few cases even before Dalhousie provided a very convenient handle to extend British dominions at the expense of the mis-governed states. Coorg had been annexed in 1835 after a general war had been declared against it. The Indian Government suggested taking over of administration of Oudh for a time but the Home Government stuck tenaciously to

non-intervention and did not agree to Auckland's suggested treaty. Hardinge fully aware of the dangers brewing up in the Punjab, gave a strict warning to Oudh in 1847 to effect reform. No reform having been effected, Lord Dalhousie proposed a fresh treaty whereby the King of Oudh was to retain his honours, but the administration was to pass into the hands of the Government of India. The King of Oudh refused to agree. Then the annexation was made which might well have been made earlier. It was this sad experience of continued misrule in an Indian State as a result of pursuing the policy of non-intervention which induced Dalhousie to welcome additions of territories by the operation of the Doctrine of Lapse. Indian rulers appear to have stood at a discount and the annexation was the only reply to the policy of non-intervention. The Mutiny of 1857 showed that annexation was unwelcome both to the British Government and the Indian rulers so both parties were ready for a change in policy and the old idea that the British Government could not interfere in cases of mis-rule was swept away. In fact the Indian rulers themselves welcomed the change which was initiated after the Mutiny.

✓ The period after the Mutiny is a period of political stability during which India made great material progress. The Government of India which now controlled the major portion of India was ready to assure the rulers of the Indian States that their position would henceforward be quite secure. These ideas were beautifully enshrined in the Queen's proclamation of 1858 which assured the princes that Government of India had no territorial ambitions, as the following words show :—

“We shall respect the rights, dignity and honour of Indian Princes as Our own; and we desire that they as well as Our own subjects, should enjoy that prosperity and social advancement which can only be secured by internal peace and good government.”

To implement this declaration of policy, 141 Princes were granted Sanads by which they were given the right of adoption. The price of this security enjoyed by the Indian States since 1858 has been 'the constructive interpretation' placed upon the Indian treaties by the Government of India. Individual treaties have tended to lose force and there has been a tendency to read them all together. Out of this study has arisen what might be called a standard type of political relationship with the Indian states.

Whilst the Princes were given the right of adoption Government clearly asserted its right as paramount power to decide about succession to the thrones of the Indian states. In cases of mis-government the right of deposition was also exercised. It was a natural corollary of the position adopted since the Mutiny. If the Princes were to be secured of their thrones they were expected to govern well & if states were mis-governed it was essential that the ruler should be removed and the control of the state placed under another member of the ruling family. The case of Gaikwar of Baroda which occurred in 1874 is an instance in point. In the case of Manipur (Assam) in 1891 the chief who rebelled against the paramount power was deposed and replaced by his son. The case of the rendition of Mysore in 1881 also shows that the policy of annexation became practically obsolete after the Mutiny. Failure of natural heirs, mis-conduct, prolonged occupation of a state's territory in the case of a minor, rebellion—none of these have since 1858 been considered as a rightful cause for extending more territories. It is unnecessary to point out that this situation never existed before 1858. In place of annexation, interference in internal administration of Indian states became more frequent and the object was to prevent serious abuses in administration and to avoid the necessity of a severe measure like annexation.

In the post-Mutiny period the tendency of British administration has been to conform to a standard pattern and the Indian

Princes have likewise been persuaded and encouraged to give up ancient methods of administration and to adopt the institutions developed by Government for the rest of India. Other forces like the Railway, Telegraph and the Press have also been at work and have gone a long way to unify the Indian States with British India. It is not necessary to go into details. Not in one, but, in many respects have the Indian States given up rights, whole, or in part, which formerly belonged to them. The India of the post-Mutiny period is known for its material advancement. So many of the lines of progress could not have moved further without the Indian States becoming willing promoters of the cause of advancement. The extension of the railway system necessitated that so many of the Indian States through whose territories railway lines passed should sign agreements vesting in the Government of India the sovereign right of the land to be used by the Railway. Again, various states have agreed, in the interest of free trade in India, to give up their rights to levy import duties. The extradition of criminals has also necessitated the forming of supplementary treaties. The manufacture and the prevention of the muggling of salt and opium have also led to treaties with certain states. The development of trade relations with Eastern Turkistan led to a treaty in 1870 with the Maharaja of Kashmir whereby in return for the abolition of all transit duties on goods passing to and from Eastern Turkistan, the Maharaja was given custom duties on all goods imported into Kashmir. Postal conventions and currency agreements were made with several states, many of the states entered into separate agreements for the control of Imperial Service Troops serving beyond the limits of their states. In 1902 the Nizam leased to British Government in perpetuity the Hyderabad Assigned Districts. Fresh sanads were granted to several chiefs and these were revised from time to time as the circumstances required. In 1911 the new state of Benares was created.

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All this shows that the Indian States have come into vital contact with the British Indian administration at many points, and rights and duties have been altered, some time with and some time without the formation of fresh agreements.

No doubt the states have lost certain privileges as a result of these unifying influences and policy. Interference has sometimes been effected in the face of a treaty pointing to the contrary. On the other hand they have gained rights also. For instance even those states have been given right of adoption which did not receive any Sanad from Lord Canning.

Summing up the position since 1858 we might say that the foreign policy of the state rested in the hands of the British Government, which felt it necessary to interfere in internal administration whenever circumstances required. "It exercised a control over successions, interposed its authority during minorities, could depose a prince whose government was exciting revolt but would aid on its own terms a prince against internal agitation." The Princes were required to help in the defence of the country and the Empire and to grant railway concessions primarily for military purposes. Persuasion was used to achieve economic schemes. Whereas the British Government did all this it still left a great many things untouched. It did not alter the constitution of the state and made no attempt to enforce certain well known principles of civil government, among which might be mentioned the maintenance of the rights of the subjects, their liberty, property and so forth.*

The Montague Chelmsford scheme of reforms suggested that in order to remove uncertainty it was necessary to codify usage with regard to treaty rights. At the same time it suggested that in order to put the idea of a 'subordinate alliance' of the states on a firm and useful footing it was desirable to establish a Chamber of Princes which might deliberate on matters of com-

*Keith. A Constitutional History of India, 1600—1935, pages 219-221.

mon interest to the States. It is interesting to observe that this anxiety on the part of the Government of India to raise the status of the Indian States grew keener as the pressure of radical political opinion increased in British India. As a matter of policy the states were to serve as counter-weights against the weight of anti-British agitation in India.

Since 1921 the relations of most states have been directly established with the Governor-General as representative of the Crown. Constitutional ideas have not made much progress in many of the states. The rulers of the states are not subject to law. This despotism is bound to figure in sharp contrast with the increasing political rights in British India. The Chamber of Princes established since 1921, to discuss points of common interests to the states has somehow concentrated more attention on requiring the British Government to codify its political practices concerning the states. They have gained certain advantages no doubt. In case of regular successions the recognition and not the sanction of the Government of India are now required. The Government of India has, however, always effectively maintained the right as paramount power to interfere in the states if the circumstances require.

The Government of India, however, is not anxious to interfere except in cases of flagrant abuse of power. Its desire to maintain the authority of Indian States, however, clashes with the desire of the subjects of the Indian States to press for rights such as the British Indian subjects enjoy. The States' Peoples' Conference (recognised by the Indian National Congress) stands for securing these rights and it must be admitted that their conception of these rights is not particularly of a reactionary character. Time alone can decide. In the meantime the Government of India has considered it its duty to protect the rulers of the Indian States against reactionary attacks.

The interest of the Government of India and the Indian States

are now common. The rulers of states are members of the British Empire and owe allegiance to the Sovereign of England. The Government of India must protect these rulers, for by doing so it protects the Imperial connection with an important part of India. Federation will come about after a time when a fixed minimum number of states have expressed their willingness to join it by signing the Instruments of Accession. States which do not wish to be federated, can maintain their direct relationship with the King Emperor through his agent the Viceroy of India. But it is not likely that states which do not federate will long remain unaffected by the advancing political ideas of their neighbours. The future of states is certainly full of great possibilities but it is difficult to outline the course of progressive forces.

PART II

PART II

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- (A) The Indian States (Protection Against Disaffection)
Act, 1922
- (B) The Indian States (Protection) Act, XI of 1934

**(A) INDIAN STATES (PROTECTION AGAINST
DISAFFECTION) ACT, 1922**

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The Indian States (Protection Against Disaffection) Act, 1922.

(Made by the Governor-General under the provisions of section 67-B of the Government of India Act, and received the assent of His Majesty signified by an Order of His Majesty in Council, dated the 12th March, 1923, and published in the "Gazette of India", dated the 28th April, 1923.)

An Act to prevent the dissemination by means of books, newspapers and other documents of matter calculated to bring into hatred or contempt, or to excite disaffection against Princes or Chiefs of States in India or the Government or Administrations established in such States.

Whereas it is expedient to prevent the dissemination by means of books, newspapers and other documents of matter calculated to bring into hatred or contempt, or to excite disaffection against Princes or Chiefs of States in India or the Governments or Administrations established in such States ; It is hereby enacted as follows :—

NOTES.

Preamble.—The "preamble" generally repeats the title. It may be useful in removing a doubt.¹ 'The preamble of a statute is a key to the understanding of the Act, as it states the general object and intention of the Legislature in passing the enactment.

1. (1868) 9 W.R. 402, 404 (F.B.).

It may be resorted to in fixing the meaning of words which may have more than one meaning and in keeping the effect of the Act within its real scope." The preamble of an Act sets forth the reason for the particular Act of the Legislature and foreshadows what is intended to be effected by the Act. It is a key to open the minds of the framers of the Act. It may be referred to for the purpose of clearing up any ambiguity."

Short title
and extent.

1. (1) This Act may be called the Indian States (Protection against Disaffection) Act, 1922.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

NOTES.

Object and scope of the Act.—The preamble shows that the Act is intended to protect the Princes or Chiefs of States in India or the Government or Administrations established in such states, from disaffection caused against them by the publication in British India of books, newspapers and other documents.

Extent.—The Act extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

British India.—The term British India is not defined in the Act, and therefore the definition of this term given in section 3, clause (7) of the General Clauses Act X of 1897, as modified by the Government of India (Adaptation of Indian Laws) Order, 1937, will apply. That definition is as follows:—

" 'British India' shall mean, as respects the period before the commencement of Part III of the Government of India Act, 1935, all territories and places within His Majesty's dominions which were for the time being governed by His Majesty through the Governor-General of India or through any Governor

2. Vide Maxwell, 2nd Ed., page 52.

3. Secretary of State v. Vasudeo Venkatesh Shetti & another, A.I.R. 1929 Bom. 46=30 Bom. L.R. 1494=53 Bom. 97=115 I.C. 409.

or officer subordinate to the Governor-General of India, and as respects any period after that date means all territories for the time being comprised within the Governors' Provinces and the Chief Commissioners' Provinces, except that a reference to British India in an Indian law passed or made before the commencement of Part III of the Government of India Act, 1935, shall not include a reference to Berar."⁴

Date of commencement of Act.—"In the absence of any date given in the Act, it should be deemed to have come into operation from 28th April, 1923, when the assent of His Majesty signified by an order of His Majesty in Council, dated the 12th March, 1923, was published in the Gazette of India."⁵

2. In this Act, unless there is anything repugnant in the Definitions.
subject or context,—

- (a) "book" and "newspaper" have the meanings respectively assigned to them by the Press and Registration of Books Act, 1867 ;
- (b) "disaffection" includes disloyalty and all feelings of enmity ; and
- (c) "document" includes any painting, drawing, photograph, or other visible representation.

NOTES.

Clause (a): "book" and "newspaper."—The words 'book' and 'newspaper' have not been defined in the Act, but it has been laid down that they shall have the meanings respectively assigned to them by the Press and Registration of Books Act,

4. The above definition of 'British India' was substituted for the one given below, by the Government of India (Adaptation of Indian Laws) Order, 1937: "'British India' shall mean all territories and places within His Majesty's dominions which are for the time being governed by His Majesty through the Governor-General of India or through any Governor or other officer subordinate to the Governor-General of India."

5. Vide section 5, General Clauses Act, X of 1897.

1867, which are as follows :—

- (1) 'Book' includes every volume, part or division of a volume, in any language, and every sheet of music, map, chart or plan separately printed or lithographed;
- (2) 'Newspaper' means any printed periodical work containing public news or comments on public news.

Clause (b): "disaffection."—Clause (b) of section 2 provides that the word 'disaffection' includes disloyalty and all feelings of enmity. The definition given here, closely resembles the one given in section 124-A of the Indian Penal Code.

The word disaffection means in addition to hatred and contempt, enmity, hostility and every form of ill-will towards the Government. It should not be restricted to courses of action which lead to rebellion or forcible resistance.⁶ The expression 'disaffection' is best defined as primarily meaning 'the contrary to affection,' and it goes very much towards expressing the same as 'hatred or dislike.' It may cover something, perhaps a little different from the expression 'hatred' because it includes disloyalty.⁷ To urge people to rise against the Government is tantamount to trying to excite feelings of disloyalty in their minds.⁸ 'Feelings of enmity' include illwill, hostility, feelings of dislike amounting to enmity, and anything of a similar class or character which can be summarised under the expression 'disloyalty' and 'feelings of enmity.'⁸ Disaffection means a feeling contrary to affection, in other words, 'dislike or hatred.' Disaffection is defined in the New English Dictionary as 'absence or

6. *Annie Besant v. Government of Madras*, 39 Mad. 1085=37 I.C. 525=21 M.L.T. 124=A.I.R. 1918 Mad. 1210.

7. Per Fawcett, J. in *Philip Spratt*, (1927) Fifth Criminal Sessions, Case No. 1, decided on Nov. 24, 1927.

8. Per Blackwell, J. in *Krishnaji Khadilkar*, Second Criminal Sessions Case No. 1, decided on March, 27, 1929.

9. *Queen Empress v. Bal Ganga Dhar Tilak*, 22 Bom. 112.

alienation of affection or kindly feelings, dislike, hostility, political alienation or discontent, a spirit of disloyalty towards the Government or existing authority'; in Latham's edition of Johnson as 'dislike, illwill, want of zeal for the Government, want of ardour for the reigning princes'; in Webster as 'state of being disaffected, alienation or want of affection or good-will, unfriedliness, disloyalty, with synonyms 'dislike, disgust, unfriedliness, illwill, alienation, disloyalty, hostility.'¹⁰

Clause (c): "document."—Section 29 of the Indian Penal Code defines the word 'document' as follows:—

The word 'document' denotes any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter.

Explanation 1.—It is immaterial by what means or upon what substance the letters, figures or marks are formed, or whether the evidence is intended for or may be used in, a Court of justice or not.

Illustrations.—A writing expressing the terms of a contract, which may be used as evidence of the contract, is a document.

A cheque upon a banker is a document.

A power-of-attorney is a document.

A map or plan which is intended to be used or which may be used as evidence, is a document.

A writing containing directions or instructions is a document.

Explanation 2.—Whatever is expressed by means of letters, figures or marks as explained by mercantile or other usage,

10. Vide foot-note at page 134 of the Indian Law Reports 22 Bom. 112.

shall be deemed to be expressed by such letters, figures or marks within the meaning of this section, although the same may not be actually expressed.

Illustration.—A writes his name on the back of a bill of exchange payable to his order. The meaning of the endorsement, as explained by mercantile usage, is that the bill is to be paid to the holder. The endorsement is a document, and must be construed in the same manner as if the words 'pay to the holder' or words to that effect had been written over the signature.

The definition of this word given in the Indian Evidence Act, is as below :—

“‘Document’ means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used or which may be used, for the purpose of recording that matter.”

Illustrations.—A writing is a document.

Words printed, lithographed or photographed are documents.

A map or plan is a document.

An inscription on a metal plate or stone is a document.

A caricature is a document.”¹¹

The present Act lays down that the word ‘document’ includes any painting, drawing, photograph, or other visible representation.

11. Vide section 3 of the Indian Evidence Act, I of 1872,

3. (1) Whoever edits, prints or publishes, or is author of any book, newspaper or other document which brings or is intended to bring into hatred or contempt, or excites or is intended to excite disaffection towards, any Prince or Chief of a State in India or the Government or Administration established in any such State, shall be punishable with imprisonment which may extend to five years, or with fine, or with both. Penalty.

(2) No person shall be deemed to commit an offence under this section in respect of any book, newspaper or other document which without exciting or being intended to excite hatred, contempt or disaffection, contains comments expressing disapprobation of the measures of any such Prince, Chief, Government or Administration as aforesaid with a view to obtain their alteration by lawful means, or disapprobation of the administrative or other action of any such Prince, Chief, Government or Administration.

NOTES.

Scope.—It will be noticed that this section is very similar in its terms to section 124-A of the Indian Penal Code. The only difference being that while section 3 of this Act refers to any Prince or Chief of a State in India or the Government or Administration established in any such State, section 124-A of the Indian Penal Code refers to His Majesty or the Crown Representative, or the Government established by law in British India or British Burma. Secondly, while this section is only confined to the editing, publishing or printing of a book, newspaper or other document, the sedition under section 124-A of the Indian Penal Code, may be by words, either spoken or written, or by signs, or by visible representation, or otherwise.

Under section 3 of the Act, the imputation contained in any book, newspaper or other document is not itself punishable, but the words expressly mentioned there, namely, editing, printing

or publishing and being the author of any document so edited, printed or published, are alone severally and jointly punishable.¹²

As regards the interpretation of the expression 'brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection,' the rulings under section 124-A of the Indian Penal Code, can serve as a good guide.

The offence under section 3, consists in exciting or attempting to excite in others certain bad feelings towards (a) any Prince or Chief of a State in India or (b) towards the Government or Administration established in any such state.

Defamatory statements concerning a Prince or a Chief will be punishable.

"Publishes" : *place of trial*.—The words "publishes" in this section must be construed in the strict and narrow sense of the initial publication at the place declared by the printer and publisher as the place of publication of the newspaper. The offence of publishing a libel under the section is committed only at the declared place of publication and not at any other place where the newspaper is circulated, and the offence is, therefore triable only at that place.¹³

"Other document."—Books and newspapers are species of the genus of printed matter, and "other documents" must reasonably mean printed matter other than "books and newspapers." It must therefore be read *ejusdem generis* with the words "books" and "newspapers."¹⁴ But Gruer, A. J. C., observed in the same judgment as: ".....the words 'other documents' should not be interpreted so as to include only printed

12. Diwan Singh Maftoon, Proprietor "Riyasat," Delhi v. Emperor. A.I.R. 1936 Nag. 55=161 I.C. 635=37 Cr. L.J. 474 (2).

13. Diwan Singh Maftoon, Proprietor "Riyasat," Delhi v. Emperor, A.I.R. 1936 Nag. 55=161 I.C. 635=37 Cr. L.J. 474 (2).

14. Per Niyogi, A.J.C., in *ibid*.

documents. If no explanation of the word 'document' had been given in the Act, it would be quite legitimate to apply the principle of *ejusdem generis*, but it seems to me that, as section 2 (c) says that 'document' includes 'any painting, drawing, photograph or other visible representation,' it would be a straining of language to say that only printed documents are meant. An original painting is not 'printed,' though a reproduction of it might be; the phrase 'other visible representation' is very wide and must include documents written by hand, which is in accordance with the dictionary meaning of the word. Similarly, the words 'painting' and 'drawing' must include original oil paintings, water colours, and even chalk drawings by a street artist on the pavement. The words 'painting,' 'drawing' and 'photograph' are illustrative, and the words 'other visible representation' are comprehensive."

Intention.—The chief factor which may attract the provisions of the section is the intention with which the newspaper, book or other document is published. A man's intention must be gathered from the words used by him, not by what others rightly or wrongly understood him to mean.¹⁵ As a matter of common sense a man is presumed to intend the natural and ordinary consequences of his acts; he cannot, speaking generally, say: although this language would have the natural and ordinary effect of exciting feelings of disaffection, I did not when publishing it intend that it should be so.¹⁶ You must judge the intention having regard to the time at which it was written, the place, where it was written, and the whole of the circumstances in which it was written. In judging the question of intention of course the language of the article is itself of utmost importance in enabling you to decide what was the intention of the writer,

15. Vide section 3 of the Indian Evidence Act.

16. Queen Empress v. Bal Ganga Dhar Tilak, 22 Bom. 112.

reading the article as a whole.¹⁷

A natural consequence can properly be treated as evidence of intention. The Judicial Committee of the Privy Council have laid down that in judging the question of intent, the publisher must be deemed to intend that which is the natural result of the words used having regard, among other things, to the character and description of that part of the public who are expected to read the words.¹⁸ Intention should be inferred after reading the article in a fair, free and liberal spirit. Benefit of doubt is to be given to the accused.¹⁹ In construing a newspaper article its meaning must be taken from the article as a whole and not from isolated passages.²⁰

The law will presume intention whether good or bad from the language and conduct of the accused, and it will be then for him to show that his words were harmless or his motives innocent.²¹ When there is an attempt to excite hatred and contempt against an administration, it is not necessary to prove that there was malicious intention, because normally the attempt is moved out of malice and not through affection.²² Intention is correlated with natural consequences which flow from a particular act, because to intend a thing is to act in such a way as to expect that certain consequences would follow.”

17. *ibid.*

18. *Besant v. Advocate General of Madras*, (1919) L.R. 867 P.C.

19. *Styendra Nath Mazumdar v. Emperor*, A.I.R. 1931 Cal. 337 (2)=131 I.C. 566=32 Cr. L.J. 758=53 C.L.J. 256=34 C.W.N. 1095.

20. *Nageshwar Prasad Sharma and others v. Emperor*, A.I.R. 1925 Pat. 99=26 Cr. L.J. 78=83 I.C. 638; *Satyaranjan Bakshi and another v. King-Emperor*, A.I.R. 1927 Cal. 698=45 C.L.J. 638=103 I.C. 771=28 Cr. L.J. 723.

21. *Jiwan Singh and another v. King-Emperor*, A.I.R. 1925 Lah. 16=82 I.C. 574=6 L.L.J. 379=25 Cr. L.J. 1342.

22. *Diwan Parkash Chand v. Emperor*, A.I.R. 1937 Lah. 513=170 I.C. 439=38 Cr. L.J. 898=39 P.L.R. 782=1 L.R. 1937 Lah. 445 (S.B.), per Young C.J.

23. *V. S. Dandekar v. Emperor*, A.I.R. 1930 All. 324=122 I.C. 596=31 Cr. L.J. 429.

“*Hatred or contempt.*”—The words “hatred or contempt” mean something more than mere disapproval or dislike.²⁴

Disaffection—See notes under section 2 *supra*.

Liability.—The printer and publisher are as much liable as the writer of the book, newspaper or document. No doubt the question of his liability to punishment is a matter which has to be seriously considered, and circumstances may considerably mitigate the penalty which has to be imposed. But his liability to conviction under the section is not affected by the circumstance that the publisher who used the words did not originate them. The result of his using the words in his publication is the same whether he has written the article himself, or made use of it in other ways.²⁵ The Lahore High Court has held, that the proprietor of a press who is away and is unaware of the publication cannot be held responsible.²⁶

“*The Government or Administration established in any such State.*”—This means the existing political system as distinguished from any particular set of administrators.²⁷ ‘Government’ does not mean the person or persons for the time being. It means the person or persons collectively, in succession, who are authorised to administer Government for the time being. One particular set of persons may be open to objection, and to assail them and to attack them and excite hatred against them is not necessarily exciting hatred against the Government, because

24. *Annie Besant v. Government of Madras*, 39 Mad. 1085=A.I.R. 1918 Mad. 1210=37 I.C. 525=21 M.L.T. 124.

25. *Per Batley J., Balwant Bhopatkar*, (1906) 8 Bom. L.R. 421, 435.

26. *Chuni Lal v. Emperor*, A.I.R. 1931 Lah. 182=131 I.C. 273=32 Cr. L.J. 681=12 Lah. 483=32 P.J.R. 740.

27. *Per Starchey, J., in Queen Empress v. Ganga Dhar Tilak*, (1897) 22 Bom. 112 at p. 264.

they are only individuals, and not representatives of that abstract conception which is Government.²⁸

The words "Administration established" are used in the same sense in reference to an Indian State as the words "Government established by law" are used in regard to British India, and have the same meaning as the latter expression.²⁹ Therefore a publication which brings or tends, to bring into hatred or contempt, the Minister or Ministers, or other officials, of an Indian State, as distinguished from the system of administration established in that State, does not offend against the provisions of section 3.³⁰

Sub-section (2).—The object of sub-section (2) of section 3 is to protect *bona fide* criticism of public measures and institutions with a view to their improvement and to the remedying of grievances and abuses, and to distinguish this from attempts, whether open or disguised, to make the people hate their rulers.

"Disapprobation."—The word 'disapprobation' means simply disapproval. It is quite possible to disapprove of a man's sentiments or actions and yet to like him.³¹

Plea in mitigation of penalty.—Where a person is charged under section 3 of the Act, he has a right to plead extenuating circumstances such as a worthy motive in mitigation of the penalty to be imposed in the event of conviction and that for the purposes of making good that plea, it may be necessary for him to show that the offensive allegations were true.³²

28. Per Batley J., in *Balwant Bhaskar Bhopatkar*, (1906) 8 Bom. L.R. 421, 441; *Rajpal v. Crown*, 3 Lah. 405=A.I.R. 1923 Lah. 61=71 I.C. 519=24 Cr. L.J. 167 (S.B.).

29. *Diwan Parkash Chand v. Emperor*, A.I.R. 1937 Lah. 513=170 I.C. 439=38 Cr. L.J. 898=39 P.L.R. 782=I.L.R. 1937 Lah. 445 (S.B.), per Tek Chand, J.

30. *Ibid.*

31. Per Pattheram C.J., in *Jogendra Chander Bose*, (1891) 19 Cal. 35.

32. *Santa Singh v. Emperor*, A.I.R. 1927 Lah. 710=106 I.C. 709=29 Cr. L.J. 117.

4. The provisions of sections 99-A to 99-G of the Code of Criminal Procedure, 1898, and of sections 27-B to 27-D of the Indian Post Office Act, 1898, shall apply in the case of any book, newspaper or other document containing matter in respect of which any person is punishable under section 3 in like manner as they apply in the case of a book, newspaper or document containing seditious matter within the meaning of those sections.

Power to
forfeit
certain
publications
or to detain
them in
course of
trans-
mission
through
post.

NOTES.

Scope.—Under this section power has been given to forfeit publications, or to detain them in course of transmission through post, in case they contain matter in respect of which any person is punishable under section 3. In order to comprehend fully the law laid down by this section, the provisions of sections 99-A to 99-G. of the Code of Criminal Procedure, 1898, and of sections 27-B to 27-D of the Indian Post Office Act, VI of 1898, are given below :—

Sections 99-A to 99-G Cr. P. Code.—

“Section 99-A.—(1) Where --

(a) any newspaper, or book as defined in the Press and
Registration of Books Act, 1867, or

(b) any document,

wherever printed, appears to the Provincial Government to contain any seditious matter or any matter which promotes or is intended to promote feelings of enmity or hatred between different classes of His Majesty's subjects and which is deliberately & maliciously intended to outrage the religious feelings of any such class by insulting the religion or the religious beliefs of that class, that is to say, any matter the publication of which is punishable under section 124-A or section 153-A, or section 295-A of the Indian Penal Code, the Provincial Government may, by notification in the official Gazette, stating the grounds of its opinion,

declare every copy of the issue of the newspaper containing such matter, and every copy of such book or other document, to be forfeited to His Majesty, and thereupon any police officer may seize the same, wherever found in British India, and any Magistrate may by warrant authorise any police-officer not below the rank of Sub-Inspector to enter upon and search for the same in any premises where any copy of such issue or any such book or other document may be or may be reasonably suspected to be.

(2) In sub-section (1) 'document' includes also any painting, drawing or photograph, or other representation."

"Section 99-B.—Any person having any interest in any newspaper, book or other document, in respect of which an order of forfeiture has been made under section 99-A, may, within two months from the date of such order, apply to the High Court to set aside such order on the ground that the issue of the newspaper or the book or other document, in respect of which the order was made, did not contain any seditious or other matter of such a nature as is referred to in sub-section (1) of section 99-A."

"Section 99-C.—Every such application shall be heard and determined by a Special Bench of the High Court composed of three Judges."

"Section 99-D.—(1) On receipt of the application, the Special Bench shall, if it is not satisfied that the issue of the newspaper, or the book or other document, in respect of which the application has been made, contained seditious or other matter of such a nature as is referred to in sub-section (1) of section 99-A, set aside the order of forfeiture.

(2) Where there is a difference of opinion among the Judges forming the Special Bench, the decision shall be in ac-

cordance with the opinion of the majority of those Judges.”

“Section 99-E.—On the hearing of any such application with reference to any newspaper, any copy of such newspaper may be given in evidence in aid of the proof of the nature or the tendency of the words, signs or visible representations contained in such newspaper in respect of which the order of forfeiture was made ”

“Section 99-F.—Every High Court shall, as soon as conveniently may be, frame rules to regulate the procedure in the case of such application, the amount of the costs thereof and the execution of orders passed thereon, and until such rules are framed, the practice of such Courts in proceedings other than suits and appeals shall apply, so far as may be practicable, to such applications.”

“Section 99-G.—No order passed or action taken under section 99-A shall be called in question in any Court otherwise than in accordance with the provisions of section 99-B.”

Sections 27-B to 27-D Indian Post Office Act, VI of 1898.—Sections 27-B to 27-D of the Indian Post Office Act, 1898, run as follows :—

“Section 27-B (1).—Any officer of the Post Office authorised by the Post Master General in this behalf may detain any postal article in course of transmission by post which he suspects to contain—

(a) (i) any newspaper or book as defined in the Press and Registration of Books, Act, 1867, or

(ii) any document, containing any seditious matter, that is to say, any matter the publication of which is punishable under section 124-A of the Indian Penal Code; or

(b) any newspaper as defined in the Press and Registration

of Books Act, 1867, edited, printed or published otherwise than in conformity with the rules laid down in that Act;

and shall deliver any postal article so detained to such officers as the Provincial Government may appoint in this behalf.

(2) Any officer detaining any postal article under the provisions of sub-section (i) shall forthwith send by post to the addressee of such article notice of the fact of such detention.

(3) The Provincial Government shall cause the contents of any postal article detained under sub-section (1) to be examined and if it appears to the Provincial Government that the article contained any newspaper, book or other document described in clause (a) or clause (b) of sub-section (1), may pass such orders as to the disposal of the article and its contents, as it may deem proper, and if it does not so appear, shall release the article and its contents, unless the same be otherwise liable to seizure under any law for the time being in force :

Provided that any person interested in any article detained under the provisions of clause (a) of sub-section (1), may within two months from the date of such detention, apply to the Provincial Government for release of the same, and the Provincial Government shall consider such application and pass such orders thereon as it may deem proper :

Provided also if such application is rejected, the applicant may, within two months from the date of the order rejecting the application, apply to the High Court for release of the article and its contents, on the ground that the article did not contain any newspaper, book or other document containing any seditious matter.

(4) In this section 'document' includes also any painting, drawing, or photograph, or other visible representation."

“Section 27-C.—Every application made under the second proviso to sub-section (3) of section 27-B shall be heard and determined in the manner provided by section 99-D to 99-F of the Criminal Procedure Code, 1898, by a Special Bench of the High Court, constituted in the manner provided by section 99-C of that Code.”

“Section 27-D.—No order passed or action taken under section 27-B shall be called in question, in any Court, otherwise than in accordance with the proviso to sub-section 3 of that section.”

Government not to set out objectionable words in notification.—It is not obligatory on a Provincial Government, to set out the words or passages in the book which in its opinion are of the nature described in section 4 of the Press (Emergency Powers) Act, XXIII of 1931. If it were so it would defeat the very object of the Act, for in that event the Provincial Government itself would be giving publicity, through its official Gazette, to the words or passages, which in its opinion, offended against section 4, and be thus perpetuating the mischief, which it was the object of forfeiture to prevent.³³

5. No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall proceed to the trial of any offence under section 3, and no Court shall proceed to the trial of any such offence except on complaint by, or under authority from, the Provincial Government.³⁴

NOTES.

Sanction for complaint.—The only authority empowered to sanction the filing of a complaint under section 4, is the Provincial Government.

³³. Diwan Parkash Chand v. Emperor, A.I.R. 1937 Lah. 513=170 I.C. 439=38 Cr. L.J. 898=39 P.L.R. 782=I.L.R. 1937 Lah. 445 (S.B.): per Tek Chand, J.

³⁴. The words “Provincial Government” were substituted for the words “the Governor-General-in-Council” by the Government of India (Adaptation of Indian Laws) Order, 1937.

Effect of want of sanction.—If sanction under this section is not obtained, the defect is fatal to the proceedings, and a conviction obtained in the absence of such sanction must be set aside.³⁵ But the Calcutta High Court has held, that if the sanction is obtained pending the trial and the accused is not prejudiced, the conviction need not be set aside.³⁶

35. Mahomed Bachal Abdullah & others v. Emperor, A.I.R. 1934 Sind. 4=148 I.C. 687=35 Cr. L.J. 812; Niharan Chandra Bhattacharyya & another v. Emperor, A.I.R. 1929 Cal. 754=33 C.W.N. 834; Hari Charan Misra v. Emperor, A.I.R. 1933 Pat. 273 (2)=12 Pat. 353=14 P.L.T. 281=145 I.C. 368=34 Cr. L.J. 938.

36. Abdul Rahman & others v. Emperor, A.I.R. 1935 Cal. 316=156 I.C. 678=36 Cr. L.J. 982=62 Cal. 749.

**(B) THE INDIAN STATES (PROTECTION) ACT
XI OF 1934**

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The Indian States Protection Act. XI of 1934

(ACT NO. XI of 1934.)

[PASSED BY THE INDIAN LEGISLATURE.]

(Received the assent of the Governor General on the 20th
April, 1934.)

An Act to protect the Administrations of States in India which are under the suzerainty of His Majesty from activities which tend to subvert, or to excite disaffection towards, or to obstruct such Administrations.

Whereas it is expedient to protect the Administrations of States in India which are under the suzerainty of His Majesty from activities which tend to subvert, or to excite disaffection towards, or to obstruct such Administrations ; It is hereby enacted as follows :—

1. (1) This Act may be called the Indian States (Protection) Act, 1934.

Short title,
extent and
commence-
ment.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

(3) This section and sections 2 and 3 shall come into force at once ; the remaining sections of this Act shall come into force in any district or area only when and for such time as the ³⁷[Provincial Government] by notification in the ³⁸[official Gazette] directs.

37. The words "Provincial Government" were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

38. The words "Official Gazette" were substituted for the words "Local Official Gazette" by *ibid*.

NOTES

Scope and object of the Act.—The Indian States (Protection against Disaffection) Act, 1922 dealt with already in this book, was intended to protect the administrations of Indian States from disaffection caused against them by the publication in British India of books, newspapers and other documents only. It was, however, found that this was not sufficient to give adequate protection to the Indian States, and that further activities in the shape of (i) attacks in the press (ii) organization of activities directed against State authority, and (iii) organization of movements for the entry into a state of body of persons from British India, required to be guarded against. The present Act is therefore intended to protect the Administrations of Indian States from activities which tend to subvert, or to excite disaffection towards or to obstruct such Administrations. It is thus more comprehensive in its scope than the Act of 1922.

The object of the Bill and the spirit which induced the Government to introduce this measure were explained by the Home Member, Sir Harry Haig, in a speech before the Legislative Assembly. He said :

“In the future, as I see it, British India and the States will each have a contribution to make to the common good. We are endeavouring to evolve a new India. It will not be a mere copy of other countries, which have different traditions and culture. It will we hope be distinctly Indian. That hope will not be realised if we discard old traditions and institutions and turn for our model solely to the west.....In thinking of the States I would ask the House not to fail to recognise the distinctive traditional qualities of the system of personal administration where that system is carried on in accordance with its true principles. This Bill says that the administration of the States is to be protected, and they are entitled to be protected

against subversive attacks from beyond their own border. This is not only an obligation we owe to the peace of India as a whole—the peace of British India as well as of the Indian States—and as such I commend it with confidence to the acceptance of the House.”

Statement of Objects and Reasons.—The Statement of Objects and Reasons of the Act ran as follows :—

“Experience in recent years has shown that the ordinary law is not adequate to afford states in India the protection they may reasonably expect against activities which may be carried on in British India with the object of subverting, or exciting disaffection towards, or interfering with the administration of such states. The forthcoming constitutional changes, moreover, make it desirable that the authorities in British India should have power to protect units of the Federation from agitation directed against them from British India. Such agitation may involve (a) attacks in the press, (b) the organization of activities directed against State authority, and (c) the organization of movements for the entry into a state of bodies of persons from British India. It is considered that the administration of the States which are under the suzerainty of the Crown should be given protection against such activities and the Bill has been prepared with that general object.”³⁹

Interpretation of the Act.—It is significant that the Act contains neither any interpretation-clause, nor any illustrations to its sections. It is natural, therefore, that the words of this Act have to be interpreted in their ordinary and grammatical sense.⁴⁰

39. Vide the Gazette of India, Part V, dated 2nd September, 1933, page 112.

40. Mercantile Bank of India, Ltd. v. Official Assignee of Madras, A.I.R. 1933 Mad. 207=56 Mad. 177=64 M.L.J. 320=37 M.L.W. 32=143 I.C. 641.

British India.—The term 'British India' is not defined in the Act, and therefore the definition of this term given in section 3 clause (7) of the General Clauses Act, X of 1897, as modified by the Government of India (Adaptation of Indian Laws) Order, 1937, will apply. That definition is as follows:—

“‘British India’ shall mean, as respects the period before the commencement of Part III of the Government of India Act, 1935, all territories and places within His Majesty’s dominions which were for the time being governed by His Majesty through the Governor-General of India or through any Governor or officers subordinate to the Governor-General of India, and as respects any period after that date means all territories for the time being comprised within the Governors’ Provinces and the Chief Commissioners’ Provinces, except that a reference to British India in an Indian Law passed or made before the commencement of Part III of the Government of India Act, 1935, shall not include a reference to Berar.”

British Baluchistan, and the Sonthal Parganas.—These territories are governed by His Majesty through the Governor-General of India, or officers subordinate to him. Therefore, by virtue of the definition of British India given above, they are parts of British India. Their special mention, therefore, appears to be superfluous.

Scheduled Districts.—These territories are, undoubtedly, parts of British India, but for certain reasons, they are ordinarily excluded from the operation of the general Acts and Regulations applicable to the rest of British India. In the present section they are not so excluded. The Act, therefore applies to them also.

Date of operation of the Act.—The Act is silent as to the date from which it is to come into operation. By virtue of

section 5 of the General Clauses Act, X of 1897, it should be deemed to have come into operation from the 20th April, 1934, the date on which it received the assent of the Governor-General. Sub-section (3) of this section, however shows that the whole of the Act is not to come into operation at once. It is only sections 2 and 3 which came into force from the 20th April, 1934. The rest of the Act is designed to meet certain contingencies which may or may not be present at all times and at all places. The enforcement of the rest of the Act is, therefore, left to the discretion of the Provincial Governments, within whose respective territories, the need for the enforcement of that part of the Act arises. Such enforcement is to be notified in the particular Official Gazette of the province, where enforcement is considered proper.

2. Whoever, within or without British India, conspires to overawe, by means of criminal force or the show of criminal force, the Administration of any State in India, shall be punished with imprisonment which may extend to seven years, to which fine may be added.

Conspiracy to overawe Administration of a State in India.

NOTES.

History of the section.—In Bill No. 38 of 1933, which was introduced in the Legislative Assembly on the 28th August, 1933, and which ultimately assumed the shape of the present Act, it was proposed in clauses 2 and 3 that a new section 15-A defining the term 'India,' be introduced after section 15 of the Indian Penal Code, and that section 121-A of the same Code be amended by inserting the words "or the Administration of any State in India" after the words "or any Local Government" occurring in that section. The Select Committee appointed to consider the Bill, however, remarked as follows:—"We are of opinion that the object aimed at by clause 3 of the Bill can more suitably be attained by the creation of a separate offence in this Bill than by an amendment of the Indian Penal Code. This

decision renders clause 2 of the Bill unnecessary. . . We have also provided for the offence now created a penalty somewhat less severe than that imposed by section 121-A of the Indian Penal Code for the cognate offence when committed in relation to a Government in British India.”⁴¹ The section is based on sections 120-A and 121-A of the Indian Penal Code.

“*Conspires.*”—In section 120-A of the Indian Penal Code, criminal conspiracy is defined as follows :—

“When two or more persons agree to do, or cause to be done,—

- (1) an illegal act,
- (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy :

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.— It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.”

Offence, when complete.—The above definition would show that the offence of criminal conspiracy is complete as soon as two or more persons agree to do or cause to be done an illegal act, or an act which is not illegal by illegal means. It is immaterial whether the illegal act is the ultimate object of such an agreement or is merely incidental to that object. It is not necessary that any act or illegal omission shall take place in pursuance of the

41. Vide the Gazette of India, Part V, dated 17th February, 1934, page 35.

conspiracy. The agreement in itself is enough to constitute the offence.⁴³

But although a mere agreement may bring the conspiracy into existence yet it is nowhere said in the Penal Code that after that the offence no longer exists. Criminal conspiracy may come into existence, and may persist and will persist so long as the persons constituting the conspiracy remain in agreement and so long as they are acting in accord in furtherance of the object for which they entered into the agreement.⁴⁴

Gist of the offence.—The gist of the offence of conspiracy lies not in doing that act, or effecting the purpose for which the conspiracy is formed, nor in attempting to do any of the acts, nor in inducing others to do them, but in the forming of the scheme or agreement between the parties.⁴⁵

A recent Nagpur case also lays down that the gist of the offence consists in agreement, and where the conspiracy alleged is to commit an offence, the agreement itself amounts to criminal conspiracy; such an agreement can exist without each conspirator being aware of each and every act, of the others, and the conspiracy may be proved by other than oral evidence, by evidence of circumstances, which raise a presumption of common connected plan and certain overt acts.⁴⁶

A person may be guilty of criminal conspiracy even though the illegal act which he has agreed to do, or caused to be done,

43. S. H. Jhabwala v. Emperor, A.I.R. 1933 All 690 at 697=1933 A.L.J. 799=145 I.C. 481=34 Cr. L.J. 967.

44. Abdul Rahman v. Emperor, A.I.R. 1935 Cal. 316=I.L.R. 62 Cal. 749=156 I.C. 678=1935 Cr. C. 467.

45. Gokal Das, Amarsee and others v. Emperor, A.I.R. 1933 Sindh 333 at 336=27 S.L.R. 392=1933 Cr. C. 1130; Punjab Singh Ujagar Singh v. Emperor. 14 Lah. 84=A.I.R. 1933 Lah. 977=147 I.C. 2=35 P.L.R. 51.

46. Mohammad Ismail v. Emperor, A.I.R. 1936 Nag. 97=165 I.C. 913=38 Cr. L.J. 106=I.L.R. 1936 Nag. 152.

has not been done.⁴⁷ The *factum* of criminal agreement should not be confounded with its proof.⁴⁸

In order to constitute the offence of conspiracy, it is only necessary for the prosecution to show that the persons concerned had agreed to do or cause to be done an illegal act or an act which is not illegal by illegal means, and it is immaterial whether the illegal act is the ultimate object of such agreement or is merely incidental to the object. Where it cannot be said, except by straining language, that every one of the accused was in agreement to do the same illegal act or cause the same illegal act to be done, they cannot be held to have been parties to one and the same conspiracy.⁴⁹

Difference between Conspiracy and other charges.—Conspiracy differs from other charges in that in other charges the intention to do an act is not a crime of itself until something is done amounting to the doing or attempting to do some act to carry out that intention. Conspiracy on the other hand consists simply in the agreement or confederacy to do some act, no matter whether it is done or not.⁵⁰

Proof of Conspiracy.—A charge of conspiracy may be established either by direct evidence of an agreement between the conspirators, or it may be established by evidence of circumstances from which the Court may raise a presumption of a common concerted plan to carry out the unlawful design.¹ It is,

47. *Amrit Lal Hazra v. Emperor*, 42 Cal. 957=A.I.R. 1916 Cal. 188; *King Emperor v. Osman Sardar*, A.I.R. 1924 Cal. 809=39 C.L.J. 264=81 I.C. 824; *Haji Samu v. Emperor*, A.I.R. 1927 Sindh 161=101 I.C. 458=28 Cr. L.J. 426.

48. *Gokal Das Amarsee & others v. Emperor*, A.I.R. 1933 Sindh 333=27 S.L.R. 392.

49. *Rash Behary Shaw (Handa) v. Emperor*, A.I.R. 1936 Cal. 753=41 C.W.N. 225=1936 Cr. C. 1043.

50. *Amrit Lal Hazra v. Emperor*, I.L.R. 42 Cal. 957=A.I.R. 1916 Cal. 188, quoting *Reg. v. Hibbert*, (1875) 13 Cox. C.C. 82.

1. *Haji Samu v. Emperor*, A.I.R. 1927 Sindh 161; *Abdulla v. Emperor*, A.I.R. 1928 Sindh 73=101 I.C. 453.

however, difficult for the prosecution to secure outside and independent evidence. The prosecution has to depend upon the evidence of Police officers who are engaged in detecting crimes of this sort." As pointed out by Tek Chand, J., in *Punjab Singh Ujagar Singh v. Emperor*;² "It is often difficult, if not impossible to obtain direct proof of the alleged agreement between the various accused, and in most cases, the question becomes a matter of inference deduced from acts of persons concerned done in pursuance of an apparent criminal purpose in common between them: per Grose, J., in *R v. Brisac*³ affirmed by the House of Lords in *Mulcahy v. Reg.*⁴ As observed by, Elre, J., in the well known case of *R v. Duffield*⁵: 'It does not happen once in a thousand times when the offence of conspiracy is tried, that anybody comes before the jury to say that he was present at the time when the parties did conspire together, and when they agreed to carry out their unlawful purposes; that species of evidence is hardly ever to be adduced before a jury, but the unlawful conspiracy is to be inferred from the conduct of the parties; and if several men are seen taking several steps, all tending towards an obvious purpose, and they are seen through a continued portion of their time taking steps that lead to one end. it is for the jury to say whether those persons had not combined together to bring about that end which their conduct appears so obviously adopted to effectuate.'"' As laid down in *Barindru Kumar Gosh v. Emperor*,⁶ no proof is necessary of direct meeting or combination, nor need the persons be brought

2. Nirmal Chandra De v. King Emperor, A.I.R. 1927 Cal. 255.

3. 14 Lah. 84=A.I.R. 1933 Lah. 977=147 I.C. 2=35 P.L.R. 51.

4. (1803) 4 East. 164.

5. (1868) L.R. 3 H.L. 306.

6. (1852) 5 Cox C.C. 404.

7. See also Nitai Chandra Jana v. Emperor, A.I.R. 1937 Cal. 433=38 Cr. L.J. 852=170 I.C. 201 (S.B.).

8. 37 Cal. 467=7 I.C. 359=14 C.W.N. 1114.

into each other's presence, but the agreement may be inferred from circumstances raising a presumption of a common concerted plan to carry out the unlawful design. Nor is it necessary that all the accused should have joined in the scheme from its inception. One conspirator need not be aware of all the acts of his fellow conspirators committed in pursuance of the conspiracy.⁹

Following *R v. Murphy*,¹⁰ it has been laid down in a recent Calcutta case that in a charge of conspiracy it is not necessary that there should be express proof of the conspiracy. It is not necessary to prove that two or more persons came together actually agreed in terms to have the common design and to pursue it by common means and so to carry it into execution. There may be no witnesses to say that in their presence the conspirators agreed to carry out an unlawful object. From the acts and conduct, agreement can be inferred. If it is proved that they pursued by the acts the same object often by the same means, one performing one part of the act and the other another part of the same act so as to complete it with a view to the attainment of the object which they were pursuing, the Court is at liberty to draw the inference that they conspired together to effect that object. The question whether certain acts were done separately without any pre-arranged plan depends upon the evidence in each case. The evidence must show a common plan so as to exclude a reasonable possibility of the acts of the conspirators having been done separately and connected only by coincidence.¹¹

To establish a charge of conspiracy the prosecution must prove an agreement between two or more persons to do or cause to be done some illegal act or some act which is not illegal by

9. *Dur Mahomed and another v. Emperor*, A.I.R. 1934 Sindh 57=28 S.L.R. 119=151 I.C. 494=35 Cr. L.J. 1337.

10. (1837) 8 C & P 297.

11. *Benayendra Chandra Pandey and another v. Emperor*, A.I.R. 1936 Cal. 73=40 C.W.N. 432=161 I.C. 74=37 Cr. L.J. 394=63 Cal. 929=64 C.L.J. 154.

illegal means provided that when the agreement is other than one to commit an offence, the prosecution must go further and prove that some act besides the agreement was done by one or more of the parties in pursuance of it. When the agreement therefore, is one to do or cause to be done an act which is itself an offence, no overt act, i.e; any act done by one of the parties to the agreement in pursuance of it need be proved; the crime of criminal conspiracy is established once such an agreement is proved.¹² But evidence of association to be of any value should suggest something suspicious in such association, and no inference one way or another can be drawn from a mere casual meeting or meetings or conversation between the parties in a public place or park where mere acquaintances frequently meet and talk.¹³

Political views of the accused are a most relevant consideration as a guide to his conduct and intentions.¹⁴

The indictment in all cases of conspiracy, must in the first place charge the conspiracy, but in stating the objects of the conspiracy the same degree of certainty is not required as in an indictment for the offence conspired to be committed.¹⁵

When the object of the agreement is to do an unlawful act by an unlawful means, it is sufficient to specify the unlawful object without specifying the means adopted by all or any of

12. *Bacha Babu v. Emperor*, A.I.R. 1935 All. 162=1935 A.W.R. 1=155 I.C. 369=36 Cr. L.J. 684.

13. *Bacha Babu v. Emperor*, A.I.R. 1935 All. 162=155 I.C. 369=1935 A.W.R. 1=36 Cr. L.J. 684; *Pran Krishna v. Emperor*, A.I.R. 1935 Cal. 580=39 C.W.N. 188=36 Cr. L.J. 1322=158 I.C. 176.

14. *Manabendra Nath Roy v. Emperor*, A.I.R. 1933 All. 498=1933 Cr. C. 833.

15. *Amrit Lal Hazra v. Emperor*, 42 Cal. 957=A.I.R. 1916 Cal. 188.

the conspirators to gain that object.¹⁶ Omission to specify in the charge the persons who were parties to the conspiracy is an irregularity curable by section 537 of the Criminal Procedure Code.¹⁷

The Act not being retrospective, the accused cannot be convicted unless the prosecution establishes that they were members of the conspiracy at the date of the enforcement of the Act.¹⁸

When several persons are charged with the same conspiracy, the prosecution must prove that there is one large conspiracy involving all the persons charged and not a number of unrelated conspiracies entered into by different groups of the accused. Unity of will and purpose amongst all the accused must be proved; and any accused not shown to be a member of that large conspiracy is entitled to acquittal however bad his record may be and however much he may be suspected of this or that offence.¹⁹

Abetment.—A conspiracy is not an act committed, and it cannot therefore be abetted.²⁰

Form of the charge.—The charge under this section may be framed in the following manner:—I (name and office of the Magistrate) hereby charge you (name of the accused) as follows:—That you on or about the day of at within British India (or without British India) conspired to overawe by means of criminal force or show of criminal force the Administration of state in

16. *Haji Samo v. Emperor*, A.I.R. 1927 Sindh 161=101 I.C. 458=28 Cr. L.J. 426.

17. *Haji Samo v. Emperor*, A.I.R. 1927 Sindh 161=101 I.C. 458=28 Cr. L.J. 426.

18. *Amrit Lal Hazra v. Emperor*, 42 Cal. 957=A.I.R. 1916 Cal. 188.

19. *Mohammad Ismail and others v. Emperor*, A.I.R. 1936 Nag. 97=165 I.C. 913=38 Cr. L.J. 106=I.L.R. 1936 Nag. 152.

20. *S. Jone Bin & another v. A. Manuel*, A.I.R. 1936 Rang. 358=164 I.C. 522=14 Rang. 597=1936 Cr. C. 721.

India, and thereby committed an offence punishable under section 2 of the Indian States (Protection) Act, 1934, and within my cognizance or the cognizance of the Court of Sessions.

And I hereby direct that you be tried by this Court or the said Court on the said charge.

Criminal force.—Section 350 of the Indian Penal Code contains the following definition of criminal force :—

“Whoever intentionally uses force to any person, without that person’s consent, in order to the committing of any offence; or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.”

This definition is so wide as to include force of almost every description of which a person is the ultimate object.²¹

India.—In the original Bill No. 38 of 1933, which ultimately assumed the shape of the present Act, it was proposed to add section 15-A after section 15 of the Indian Penal Code, defining the term India in the following manner :—

“The word ‘India,’ denotes British India, together with the territories of any Indian Prince, or Chief under the suzerainty of the Queen exercised through the Governor General of India or through any Governor or other officer subordinate to the Governor General of India.” This definition was taken from the General Clauses Act, X of 1897. But the Select Committee deleted this clause as being unnecessary.²²

Punishment.—The punishment which can be awarded under this section is lesser than that under section 121-A of the Indian Penal Code.

21. *Rasul and others v. The Empress*, 4 P.R. 1889 (Cr).

22. *Vide Gazette of India*, Part V, dated 17th Feb: 1934, page 35,

Application
of Act
XXIII of
1931.

3. The Indian Press (Emergency Powers) Act, 1931, as amended by the Criminal Law Amendment Act, 1932, shall be interpreted—

(a) as if in sub-section (1) of section 4 of the Act, after clause (i) the following word and clause were inserted, namely :—

“or

(j) to bring into hatred or contempt or to excite disaffection towards the Administration established in any State in India” ;

(b) as if in Explanation 2 and Explanation 3 to the said sub-section, after the word “Government” the words “or Administration”, and after the letter and brackets “(d)” the words, letter and brackets “or clause (j)” were inserted; and

(c) as if after Explanation 4 to the said sub-section the following Explanation were inserted, namely :—

“Explanation 5.—Statements of fact made without malicious intention and without attempting to excite hatred, contempt or disaffection shall not be deemed to be of the nature described in clause (j) of this sub-section.”

23* * *

NOTES.

The Indian Press (Emergency Powers) Act, 1931.—Unlike section 2, this section does not lay down any inde-

23. The words “and any power which might, by reason of such insertions, but not otherwise, be exercised by the Local Government under that Act if so altered, may also be exercised by the Governor-General in Council; and for the purpose of the exercise by the Governor-General in Council of such powers, the Act shall be interpreted as if references to the Local Government were references to the Governor General in Council and as if to sub-section (1) of section 23 the following proviso were added, namely :—

“Provided that an application under this section against an order made by the Governor General in Council under any of the sections therein specified except section 19 shall lie to the High Court for the local area in which any security required under this Act from the printing press or newspaper concerned was deposited or to be deposited.”

were omitted by the Government of India (Adaptation of Indian Laws) Order, 1937.

pendent provision of law, but on the other hand makes certain amendments by way of additions and interpretations to the provisions of the Indian Press (Emergency Powers) Act, XXIII of 1931, as amended by the Criminal Law Amendment Act, XXIII of 1932. In order therefore, to comprehend fully the law laid down by this section, the provisions of section 4 of the Indian Press (Emergency Powers) Act, 1931, as amended by the Criminal Law Amendment Act, 1932, as further amended by this section are set out below :—

“Section 4.—*Power to declare security or press forfeited.*—(1)

Whenever it appears to the Provincial Government or the Central Government that any printing press in respect of which any security has been ordered to be deposited under section 3 is used for the purpose of printing or publishing any newspaper, book or other document containing any words, signs or visible representations which—

- (a) incite to or encourage or tend to incite to or to encourage, the commission of any offence of murder or any cognizable offence involving violence, or
- (b) directly or indirectly express approval or admiration of any such offence, or of any person, real or fictitious, who has committed or is alleged or represented to have committed any such offence, or which tend, directly or indirectly,
- (c) to seduce any officer, soldier, sailor or airman in the military, naval or air forces of His Majesty or any police officer from his allegiance or his duty, or
- (d) to bring into hatred or contempt His Majesty or the Government established by law in British

- India or the administration of justice in British India or any class or section of His Majesty's subjects in British India, or to excite disaffection towards His Majesty or the said Government, or
- (e) to put any person in fear or to cause annoyance to him and thereby induce him to deliver to any person any property or valuable security or to do any act which he is not legally bound to do or to omit to do any act which he is legally entitled to do, or
 - (f) to encourage or incite any person to interfere with the administration of the law or with the maintenance of law and order, or to commit any offence, or to refuse or defer payment of any land-revenue, tax, rate cess or other due or amount payable to Government or to any local authority, or any rent of agricultural land or any thing recoverable as arrears of or along with such rent, or
 - (g) to induce a public servant or a servant of a local authority to do any act or to forbear or delay to do any act connected with the exercise of his public functions or to resign his office, or
 - (h) to promote feelings of enmity or hatred between different classes of His Majesty's subjects, or
 - (i) to prejudice the recruiting of persons to serve in any of His Majesty's forces, or in any police force, or to prejudice the training, discipline or administration of any such force, or
 - (j) to bring into hatred or contempt or to excite disaffection towards the Administration established in any State in India.

The Provincial Government or the Central Government may, by notice in writing to the keeper of such printing press, stating, or describing the words, signs or visible representations which in its opinion are of the nature described above,—

- (i) where security has been deposited, declare such security, or any portion thereof, to be forfeited to His Majesty, or
- (ii) where security has not been deposited, declare the press to be forfeited to His Majesty, and may also declare all copies of such newspaper, book or other document wherever found in British India to be forfeited to His Majesty.

Explanation 1.—No expression of approval or admiration made in a historical or literary work shall be deemed to be of the nature described in this sub-section unless it has the tendency described in clause (a).

Explanation 2.—Comments expressing disapprobation of the measures of the Government or Administration with a view to obtain their alteration by lawful means without exciting or attempting to excite hatred, contempt or disaffection shall not be deemed to be of the nature described in clause (d) or clause (j) of this sub-section.

Explanation 3.—Comments expressing disapprobation of the administration or other action of the Government or Administration without exciting or attempting to excite hatred, contempt or disaffection, shall not be deemed to be of the nature described in clause (d) or clause (j) of this sub-section.

Explanation 4.—Words pointing out, without malicious intention and with an honest view to their removal, matters which are producing or have a tendency to produce feelings of enmity or hatred between different classes of His Majesty's subjects shall not be deemed to be words of the nature described in clause (h) of this sub-section.

Explanation 5.—Statements of fact made without malicious intention and without attempting to excite hatred, contempt, or disaffection shall not be deemed to be of the nature described in clause (j) of this sub-section.

(2) After the expiry of ten days from the date of the issue of a notice under sub-section (1), the declaration made by the publisher of such newspaper under section 5 of the Press and Registration of Books Act, 1867, shall be deemed to be annulled and no further declaration in respect of such newspaper shall be made save with the permission of the Provincial Government."

Scope and object of the Press (Emergency Powers) Act, 1931.—A section of the press developed the habit of giving direct or indirect incitement to crimes of violence and, it used, in particular 'to encourage crimes of a terrorist character by the eulogy of those guilty of such crimes.' It was also noticed that 'propaganda in furtherance of crimes of violence is carried on by means of leaflets, pamphlets, bulletins, and the like. Having regard to the spread of the terrorist movement and to the increasing number of offences committed in pursuance thereof, it was considered necessary to provide for the better control of the Press and of unauthorised news-sheets and newspapers in order to prevent the encouragement given in this respect.'²⁴

In clause (j) of section 4 (1), Press (Emergency Powers) Act, the words "Administration established" are used in the same sense in reference to an Indian State as the words "Government established by law" are used in regard to British India, and have the same meaning as the latter expression: Section 4 of the Act, does not penalise a speech or publication which brings or attempts or tends, to bring into hatred or contempt, the Minister or Ministers, or other officials of an Indian State, as such, as distinguished from the system of administration estab-

24. Vide Statement of Objects & Reasons of the Bill which was passed into Act No. XXIII of 1931.

lished in that State.²⁵

Printing Press.—This term includes all engines, machinery, types, lithographic stones, implements, utensils, and other plant or material used for the purpose of printing.²⁶

Newspaper.—This means any periodical work containing public news or comments on public news.²⁷

Book.—This term includes every volume, part or division of a volume, pamphlet and leaflet, in any language, and every sheet of music, map, chart or plan separately printed or lithographed.²⁸

Document.—The word document bears the same meanings as are assigned to it in section 29 of the Indian Penal Code and in section 3 of the Indian Evidence Act.²⁸ Section 29 of the Indian Penal Code defines the term thus:—“The word document denotes any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter.

Explanation 1.—It is immaterial by what means or upon what substance the letters, figures or marks are formed, or whether the evidence is intended for, or may be used in, a Court of Justice, or not.

Explanation 2.—Whatever is expressed by means of letters, figures or marks as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures or marks within the meaning of this section, although the same may not

25. *Diwan Parkash Chand v. Emperor*, A.I.R. 1937 Lah. 513=170 I.C. 439=I.L.R. 1937 Lah. 445=38 Cr L.J. 898=39 P.L.R. 782 (S.B.): per Tek Chand. J.

26. Vide S. 2 (8) of Act XXIII of 1931.

27. Vide S. 2 (6) of Act XXIII of 1931.

28. Vide S. 2 (1) of Act XXIII of 1931.

29. *Satyawan Acharya v. Emperor*, A.I.R. 1934 All. 1031=1934 Cr. C. 1338=4 A.W.R. 488=153 I.C. 411.

be actually expressed.”

The Indian Evidence Act defines this word as follows:—

“Document means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.”³⁰

In a Madras case under the Press (Emergency Powers) Act, 1931, it has been held that sub-sections (1) and (6) in section 2 are not mutually exclusive and though pamphlets come within sub-section (1) they will also be news-sheets within sub-section (6) if they contain any matter described in section 4 (1).^{30-a}

Intention.— The chief factor which may attract the provisions of this section is the intention with which the newspaper, book or other document is published. A man's intention must be gathered from the words used by him, not by what others rightly or wrongly, understood him to mean.³¹ Intention should be inferred after reading the articles in a fair, free and liberal spirit. Benefit of doubt is to be given to the accused.³² “We must not look to single sentences and isolated expressions,” remarked Adami, J., “but take the article as a whole and give a full, free and generous consideration, and amply deal with it in a fair and liberal spirit, not picking out objectionable sentences or strong words used, nor should undue importance be given to inflated and turgid language. We must also look to the real intention

30. Vide section 3 of the Indian Evidence Act.

30-a. *Jonnalagadda Ramalingayya v. Emperor*, A.I.R. 1936 Mad. 835=165 I.C. 860=38 Cr. L.J. 5=71 M.L.J. 357=1936 M.W.N. 614.

31. In *re Krishnaswami*, I.L.R. 32 Mad. 384=5 M.L.T. 393=2 I.C. 33=9 Cr. L.J. 456.

32. *Satyendra Nath Mazumdar v. Emperor*, A.I.R. 1931 Cal. 337 (2)=131 I.C. 566=34 C.W.N. 1095=53 C.L.J. 256=1931 Cr. C. 401=32 Cr. L. J. 758.

and spirit of the articles.”³³ The law will presume intention whether good or bad from the language and conduct of the accused, and it will be then for him to show that his words were harmless or his motives innocent.³¹ It is obviously not open to a person to say that he did not intend his language to bear the meaning which it naturally does bear.³⁵ “The owner of a press is presumed to know the contents of a seditious book that is being printed in his press. He cannot be allowed to contend that he can shut his eyes to everything going on upon his premises, and then pretend that he has no knowledge of the contents of the publications printed and issued by him. If there is a complete *prima facie* case against him, then it is for him to call evidence to show that in spite of this circumstantial evidence against him, in fact, he was away from the premises during the whole time that the book was being printed and published, and that he had not been informed either of the printing and publication or of the contents of the book.”³⁶ The Lahore High Court has also held that the proprietor of a press who is away and is not aware of the publication cannot be held responsible.³⁷ Intention is correlated with natural consequences, which would

33. Nageswar Prasad Sharma & others v. Emperor, A.I.R. 1925 Pat. 99=9 P.L.T. 786=1924 P.H.C.C. 283=83 I.C. 638=26 Cr. L.J. 78; Gopal Lal Sanyal v. King Emperor, A.I.R. 1927 Cal. 751=46 C.L.J. 156=105 I.C. 228=28 Cr. L.J. 900; Satyaranjan Bakshi v. King Emperor, A.I.R. 1927 Cal. 698=45 C.L.J. 638=103 I.C. 771=28 Cr. L.J. 723; U. Damadaya v. King Emperor, A.I.R. 1923 Rang. 212=74 I.C. 954=24 Cr. L.J. 842=I.L.R. 1923 Rang. 211; Kidar Nath Sehgal v. Emperor, A.I.R. 1929 Lah. 817=1929 Cr. C. 442.

34. Jiwan Singh v. King Emperor, A.I.R. 1925 Lah. 16=82 I.C. 574=25 Cr. L.J. 1342=6 L.L.J. 379.

35. Maniben Liladhar Kara v. King Emperor, A.I.R. 1933 Bom. 65=141 I.C. 780=57 Bom. 253=34 Cr. L.J. 231.

36. Braja Behari Burman v. Emperor, A.I.R. 1931 Cal. 349=131 I.C. 671=53 C.L.J. 182=1931 Cr. C. 413=32 Cr. L.J. 742.

37. Chuni Lal v. Emperor, A.I.R. 1931 Lah. 182=131 I.C. 273=1931 Cr. C. 302=32 Cr. L.J. 681=12 Lah. 483=32 P.L.R. 740.

flow from a particular act, because to intend a thing is to act in such a way as to expect that certain consequences should follow.³⁸ When there is an attempt to excite hatred and contempt against an administration it is not necessary to prove that there was malicious intention because normally the attempt is moved out of malice and not through affection.³⁹

Onus.—The onus is upon the person whose security has been forfeited to prove that the publications in question do not have the tendency described in the various sub-clauses of the section.⁴⁰

Hatred and contempt.—The words “hatred and contempt” mean something more than mere disapproval or dislike.⁴¹

Disaffection.—The word disaffection means in addition to hatred and contempt, enmity, hostility, and every form of illwill towards the Government. It should not be restricted to courses of action which lead to rebellion or forcible resistance.⁴² Disaffection means a feeling contrary to affection, in other words, dislike or hatred.⁴¹ Disaffection is defined in the New English Dictionary as ‘absence or alienation of affection or kindly feelings, dislike, hostility, political alienation or discontent, a spirit of disloyalty towards the Government or existing authority’; in Lathams edition of Johnson as ‘dislike, illwill, want of zeal for the Government, want of ardour for the reigning princes’; in Webster as ‘state of being disaffected, alienation or want of affection or good-will, unfriendliness, disloyalty, with synonyms

38. *T. S. Dandekar v. Emperor*, A.I.R. 1930 All. 324=122 I.C. 596=31 Cr. I. J. 429.

39. *Diwan Parkash Chand v. Emperor*, A.I.R. 1937 Lah. 513=170 I.C. 439=I.L.R. 1937 Lah. 445=38 Cr. L.J. 898=39 P.L.R. 782 (S.B.), per Young, C. J.

40. *Annie Besant v. Government of Madras*, 39 Mad. 1085=A.I.R. 1918 Mad. 1210=37 I.C. 525=21 M.L.T. 124.

41. *Ibid.*

42. *Ibid.*

43. *Queen Empress v. Bal Ganga Dhar Tilak*, 22 Bom. 112.

'dislike, disgust, unfriendliness, illwill, alienation, disloyalty, hostility.'⁴⁴ In his charge to the jury in Tilak's case,⁴⁵ Strachey, J., has laid down that "disaffection means hatred, enmity, dislike, hostility, contempt, and every form of ill-will to the Government. Disloyalty is perhaps the best general term comprehending every possible form of bad feeling to the Government. One must not make or try to make others feel enmity of any kind towards the Government." The amount or intensity of the disaffection is absolutely immaterial.⁴⁶ The class of the paper, however, in which the article appears, and the class of people among whom it will be circulated must be borne in mind,⁴⁷ and while a very large amount of latitude is and must be allowed to writers in the public press, the interests of the state, must at the same time, be not lost sight of and writers cannot under the guise of criticism of public affairs be allowed to indulge in attributing base, improper or dishonest motives to those who carry on the work of the Government of the country.⁴⁸

Explanation 5.—The object of the explanation is to protect honest journalism, and *bonafide* criticism and to distinguish this from attempts, whether open or disguised to make the people hate their rulers.⁴⁹

44. Vide Footnote at page 134 of the Indian Law Reports. 22 Bom. 112 (Queen Empress v. Bal Ganga Dhar Tilak).

45. 22 Bom. 112.

46. Nageswar Prasad Sharma and others v. King Emperor, A.I.R. 1925 Pat. 99=83 I.C. 638=26 Cr. L.J. 78=1924 P.H.C.C. 283=9 P.L.T. 786.

47. Ibid.

48. Satyaranjan Bakshi and another v. King Emperor, A.I.R. 1927 Cal. 698=45 C.L.J. 638=103 I.C. 771=28 Cr. L.J. 723.

49. Queen Empress v. Bal Ganga Tilak, 22 Bom. 112 at 138.

Power to
prohibit
assemblies.

4. (1) When a District Magistrate or in a Presidency-town the Chief Presidency Magistrate is of opinion that within his jurisdiction attempts are being made to promote assemblies of persons for the purpose of proceeding from British India into the territory of a State in India and that the entry of such persons into the said territory or their presence therein is likely or will tend to cause obstruction to the Administration of the said State or danger to human life or safety or a disturbance of the public tranquillity or a riot or an affray within the said territory, he may, by order in writing stating the material facts of the case, prohibit within the area specified in the order the assembly of five or more persons in furtherance of the said purpose.

(2) When an order under sub-section (1) has been made, and for so long as it remains in force, any assembly of five or more persons held in contravention of the order shall be an unlawful assembly within the meaning of section 141 of the Indian Penal Code, and the provisions of Chapter VIII of the Indian Penal Code and of Chapter IX of the Code of Criminal Procedure, 1898, shall apply accordingly.

(3) An order under sub-section (1) shall be notified by proclamation, published in the specified area in such places and in such manner as the Magistrate may think fit, and a copy of such order shall be forwarded to the Provincial Government.

(4) No order under sub-section (1) shall remain in force for more than two months from the making thereof, unless the Provincial Government, by notification in the official Gazette, otherwise directs.

NOTES.

Scope of the section.—This section is based on section 144 of the Code of Criminal Procedure, but its operation is limited to the prohibiting of assemblies of persons for the purpose of

proceeding from British India into the territory of an Indian State, and is therefore narrower in scope than section 144 of the Code of Criminal Procedure, which is intended generally to empower Magistrates to take preventive measures in certain urgent cases.

Who can take action under this section.—It is to be noted that the only officer who is empowered to issue orders under this section is the Chief Presidency Magistrate in Presidency towns, and the District Magistrate in all other places.

“Attempts are being made.”—Attempt implies intention,⁵⁰ but law does not take notice of a mere intention without an act in pursuance of intention.¹ The Magistrate would not, therefore, be justified in issuing any order under this section unless he is satisfied that some act in pursuance of an intention is being done.

Acts for the prevention of which order can be passed.—The only act which can be prevented by an order under this section is the promoting of assemblies of persons for the purpose of proceeding from British India into the territory of a State in India, and that can be done only if there is a likelihood for a tendency on the part of such persons to cause obstruction to the Administration of a State or danger to human life or safety or a disturbance of the public tranquillity or a riot or an affray within the said territory.

British India.—See notes under section 1 *supra*.

India.—Section 3(27) of the General Clauses Act X of 1897, as modified by the Government of India (Adaptation of Indian Laws) Order, 1937, defines “India” as follows—

“ ‘India’ shall mean British India together with all territories

50. In re Krishnaswamy, 32 Mad. 384=5 M.L.T. 393=2 I.C. 33=9 Cr. L. J. 456.

1. Queen Empress v. Baku, I.L.R. 24 Bom. 287=1 Bom. L.R. 678.

of any Indian Ruler under the suzerainty of His Majesty, all territories under the suzerainty of such an Indian Ruler, the tribal areas, and any other territories which His Majesty in Council may, from time to time, after ascertaining the views of the Central Government and the Central Legislature, declare to be part of India."

"Order in writing".—The order which a Magistrate is empowered to pass under this section must be in writing and must set out the material facts of the case. But before such an order is passed, the Magistrate must form an opinion based on evidence or information before him that attempts are being made to promote assemblies of persons for the purpose stated in the section². It is not necessary that the information on which a Magistrate acts should be on record.³ It may be on a police report.⁴ The Magistrate, however, should not act on the report of an interested person.⁵ In a case under section 144 of the Criminal Procedure Code, it has recently been held by the Bombay High Court that an order under the section should be clear and definite.⁶ This authority can equally apply to orders made under this section.

The Calcutta High Court is of the opinion that in cases of grave urgency the Magistrate need not set out in the order the grounds of his action, where on the facts reported by the Police and accepted by him, there appears to be no doubt that a most serious riot is apprehended,⁷ but in the absence of any such

2. Goshain Luchmun Pershad Pooree v. Pahoop Narain, 24 Suth, W.R. Cr. 30

3. Elavarisu Venamamalai Ramanuja v. Venamamalai Ramanuja, 3 Mad. 354=6 Ind. Jnr. 29=2 Weir 90.

4. Jang Bahadur v. Emperor, A.I.R. 1924 Oudh 338 (340)=77 I.C. 721=11 O.L.J. 54.

5. Emperor, v. Rabi Pant, A.I.R. 1915 Cal. 733=16 Cr. L.J. 320.

6. Sorab Shavaksha Batliwala v. Emperor, A.I.R. 1930 Bom. 33=36 Bom. L.R. 1129=154 I.C. 637; see also Emperor v. Niaz Khan, 9 Luck. 543=A.I.R. 1934 Oudh. 162=148 I.C. 518=11 O.W.N. 384.

7. Bhupendra Mohan Pal Chaudhuri v. Chairman of Madaripur Municipality A.I.R. 1917 Cal. 6=18 Cr. L.J. 892.

materials, and in the absence of any emergency, the order would be regarded as without jurisdiction.⁸

Duration of the order.—Sub-section 4 expressly limits the duration of the order to two months. If circumstances demand an extension of this period, the Provincial Government alone is empowered to extend time by a notification in the official Gazette.

5, (1) Where in the opinion of a District Magistrate or in a Presidency-town the Chief Presidency Magistrate, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable, such Magistrate may, by written order stating the material facts of the case and served in the manner provided by section 134 of the Code of Criminal Procedure, 1898, direct any person to abstain from a certain act if such Magistrate considers that such direction is likely to prevent or tends to prevent obstruction to the Administration of a State in India or danger to human life or safety or a disturbance of the public tranquillity or a riot or an affray within the said State.

Power to
issue
directions
prohibiting
certain acts

(2) An order under sub-section (1) may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed *ex-parte*.

(3) An order under sub-section (1) may be directed to a particular individual, or to the public generally.

(4) A District Magistrate or Presidency Magistrate may, either on his own motion or on the application of any person aggrieved, rescind or alter any order made under sub-section (1) by himself or by his predecessor in office.

8. Radhe Das v. Jairam Mahto, A.I.R. 1929 Pat. 714; Francis Duke v. Jogendra Kumar, A.I.R. 1933 Cal. 69-59 Cal. 513=141 I.C. 858; Akal Mahtan v. Mahabir Mahtan A.I.R. 1924 Pat 145; Gobinda Chetty v. Emperor. A.I.R. 1914 Mad. 697=27 M.L.J. 628.

(5) Where such an application is received, the Magistrate shall afford to the applicant an early opportunity of appearing before him either in person or by pleader and showing cause against the order; and if the Magistrate rejects the application wholly or in part, he shall record in writing his reasons for so doing.

(6) No order under sub-section (1) shall remain in force for more than two months from the making thereof unless the Provincial Government, by notification in the official Gazette, otherwise directs.

NOTES.

Foundation of the section.—This section is practically a copy of section 144 of the Criminal Procedure Code, 1898, with only certain verbal alterations to meet the object of the present Act. The main difference between section 144 of the Criminal Procedure Code and this section is that whereas under section 144 the District Magistrate, the Chief Presidency Magistrate, Sub-Divisional Magistrate, or any other Magistrate not being a Magistrate of the third class specially empowered by the Provincial Government or the Chief Presidency Magistrate or the District Magistrate can proceed under that section, it is only the District Magistrate, or in a Presidency-town, the Chief Presidency Magistrate that can take action under the present section.

This section differs from the previous section 4 of this Act in that the previous section is confined to the prohibiting of assemblies of five or more persons from proceeding to or entering into the territory of an Indian State, the present section is like section 144 of the Criminal Procedure Code, meant to empower the District or the Chief Presidency Magistrate to prohibit certain acts in general which tend to obstruct the Administration of States. The section is thus much wider in its scope than section 4.

When action can be taken under this section.—The District

Magistrate or the Chief Presidency Magistrate can only take action under this section if the matter is very urgent, and a speedy prevention of the apprehended act is desirable in the interest of the Administration of any State. Unless there is urgency the Magistrate has no jurisdiction to proceed under this section.⁹ The facts of the case in themselves must show urgency¹⁰.

Written order should contain material facts.—The written order which a District Magistrate or Chief Presidency Magistrate may pass under this section must contain the material facts of the case.¹¹ The information on which the Magistrate acts may be oral,¹² or contained in a Police report.¹³ A Calcutta authority, however, lays down that a Magistrate has jurisdiction and is fully justified in passing an emergent order, without setting out in the order the grounds of his action, where on the facts reported by the Police and accepted by the Magistrate, there appears to be no doubt that a most serious riot is apprehended¹⁴, but in the absence of such materials, and of any emergency, the order would be regarded as without jurisdic-

9. Hafiz Hafiz-ud-din v. C. Laherde, 50 All. 414=A.I.R. 1928 All. 14 =105 I.C. 815=29 Cr. L.J. 991=26 A.L.J. 83; Daimulla Talukdar v. Maharulla, 27 Cal. 918; Chandranath Mukerjee v. Emperor, A.I.R. 1919 Cal. 584; Sri Ramamurthi v. Emperor, A.I.R. 1931 Mad. 242; Haji Ali v. Emperor, A.I.R. 1925 All. 678; Cowasjee Jehangir Ready Money, in re, A. I.R. 1920 Bom. 367; Francis Duke Cobridge v. Jogendra Kumar Roy, A.I.R. 1933 Cal. 348; Gobinda Chetty v. Emperor, A.I.R. 1914 Mad. 697; Jang Bahadur v. Emperor, A.I.R. 1924 Oudh. 338; Emperor v. Moti Lal Gangadhar, A.I.R. 1931 Bom. 513; Akal Malitan v. Mahabir Mahtan, A.I.R. 1924 Pat. 145=75 I.C. 531=5 P.L.T. 90.

10. Kamini Mohan Das Gupta v. Harendra Kumar Sarkar, 38 Cal. 876=13 Cr. L.J. 126; see also Shebalak Singh v. Kamar-ud-din Mandal, 2 Pat. 94=A.I.R. 1922 Pat. 435=68 I.C. 149 (F.B.).

11. R. E. Blong v. Emperor, A.I.R. 1924 Pat. 767=82 I.C. 42=6 P.L.T. 130.

12. Elavarisu Vanamamalai Ramanuja v. Vanamamalai Ramanuja, 3 Mad. 354.

13. Jang Bahadur v. Emperor, A.I.R. 1924 Oudh. 338.

14. Bhupendra Mohan Pal Chaudhuri v. Chairman of Madaripur Municipality, A.I.R. 1917 Cal. 6=18 Cr. L.J. 892.

tion.¹⁵

Order to abstain from a certain act.—The first essential of an order passed under this section is that it must be addressed to a definite person, *viz.*, it cannot be addressed to a class or body of persons,¹⁶ and secondly, the act prohibited should be a certain and definite act, which if not prohibited would cause or be likely to cause obstruction to the Administration of a State in India or danger to human life or safety or a disturbance of the public tranquility or a riot an affray within the said State, and thirdly, the order must be served upon the person concerned in the manner provided by section 134 of the Code of Criminal Procedure, 1898, *viz.*, in the manner provided for service of summons, or if that be not possible then by proclamation published in such manner as the Provincial Government may by rule direct, a copy of which should be stuck up at such place or places as may be fittest for conveying the information to such person.¹⁷ Vague and indefinite orders should not be passed.

For the validity of an order under this section it is also necessary that the order should be to abstain from a certain act, and not to do a certain act, because the section authorises only a restrictive order and does not permit the District Magistrate, or the Chief Presidency Magistrate to make a mandatory or positive order directing a person to do a particular act.¹⁸

15. *Francis Duke Cobridge v. Jogendra Kumar Roy*, A.I.R. 1933 Cal. 348; *Radhe Das v. Jairam Mahto*, A.I.R. 1929 Pat. 714; *Chandra Kanta Kanji Lal v. Emperor*, A.I.R. 1916 Cal. 69=17 Cr. L.J. 464; *Akal Mahtan v. Mahabir Mahtan*, A.I.R. 1924 Pat. 145; *Gobinda Chetty v. Emperor*, A.I.R. 1914 Mad. 697.

16. *Queen Empress v. Pratab Chundar*, 25 Cal. 852; *King Emperor v. Ganesh Vasudev*, 55 Bom. 322=A.I.R. 1931 Bom. 135=130 I.C. 396=33 Bom. L.R. 59=32 Cr. L.J. 507.

17. See Section 134 of Act. V of 1898.

18. *B. N. Sasmal v. Emperor*, 58 Cal. 1037=A.I.R. 1931 Cal. 263=53 C.L.J. 175=130 I.C. 872=32 Cr. L.J. 592; *Kusum Kumari Debi v. Hem Nalini Debi*, A.I.R. 1933 Cal. 724=146 I.C. 169=34 Cr. L.J. 1192=38 C.W.N. 115.

Sub-section (2): Ex parte order.—This sub-section empowers the District or the Presidency Magistrate to pass an *ex parte* order, but this power can only be exercised in case of emergency or where the circumstances are such that the required notice cannot be served upon the desired person in due time,¹⁹ for instance, when there is a Police report that immediate action is necessary,²⁰ or when the Magistrate apprehends that he cannot prevent a breach of the peace unless the order be immediately made.²¹ When such a step is taken, the reasons for proceeding under this sub-section must be recorded;²² otherwise the order will be set aside.²³

Sub-section (3).—The corresponding sub-section under section 144 of the Criminal Procedure Code has the words 'when frequenting or visiting a particular place' after the words 'or to the public generally'. It has been held under sub-section (3) of section 144 of the Criminal Procedure Code that a Magistrate has no power to pass an order directed against the general public *simpliciter*, and that the order can only be directed to the general public when frequenting or visiting a particular place.²⁴ The omission of the words 'when frequenting or visiting a particular place' from the present sub-section would appear to indicate that the order could be addressed to the general public *simpliciter*.

Sub-section (4).—This sub-section contemplates the passing of only one order rescinding or altering the original order. It is

19. Joyanti Kumar Mukerji v. Middleton, 27 Cal. 785; Mahammadi Mollah v. Emperor, 2 C.W.N. 747; Venkatraya Gownden v. Very Rev. N. Roudy, 11 Cr. L.J. 449.

20. Jang Bahadur v. Emperor, A.I.R. 1924 Oudh 338=77 I.C. 721=11 O.L.J. 54.

21. Arumuga Mudali v. S. E. Koo, Perumalswamy Chetty, A.I.R. 1914 Mad. 138.

22. Venkataramana Iyer v. Emperor, A.I.R. 1919 Mad. 1004.

23. Venkatraya Gownden v. Very Rev. N. Roudy, 11 Cr. L.J. 449.

24. Emperor v. Motilal Gangadhar, A.I.R. 1931 Bom. 513=33 Bom. L.R. 1178=134 I.C. 1237=33 Cr. L.J. 75.

clear therefore that no intermediate or interlocutory order pending final orders can be passed under this sub-section.²⁵ There is no doubt that in the words used in the sub-section the District Magistrate or the Presidency Magistrate is empowered to modify or rescind the original order on any ground whatsoever, but generally speaking the rescission or alteration should only be made when the circumstances which necessitated the order do not exist.²⁶

Sub-section (5).—When an *ex parte* order under sub-section (3) is called in question under sub-section (4), the normal procedure should be for evidence to be recorded in the usual way by examination and cross-examination of witnesses in open Court,²⁷ because the proceeding is a judicial one.²⁸ The Magistrate is bound to record the evidence, and cannot refuse to record it on the ground that his opinion could not be changed by any such evidence.²⁹ A copy of the information received by the Magistrate must be supplied to the accused, as he has a right to know what the information was on which the Magistrate acted in order to show that it was unfounded or insufficient.³⁰

Sub-section (6).—The order passed under this section can remain in force only for two months, and therefore it is necessary that it should be such as can be recalled at the end of two months, and should not be in its nature irrevocable.³¹ The provisions of the section cannot be allowed to be evaded by means of succes-

25. Satish Chandra Roy v. Emperor, 4 Cr. L.J. 433.

26. Shehalak Singh v. Kamar-ud-din Mandal, 2 Pat. 94 = A.I.R. 1922 Pat. 435 = 68 I.C. 149 (F.B.).

27. (Kolli) Satyanarayana Choudhari v. Emperor, A.I.R. 1931 Mad. 236 = 131 I.C. 449 = 1930 M.W.N. 841 = 60 M.L.J. 378 = 33 M.L.W. 632 = 32 Cr. L.J. 744.

28. Ibid; see also Muthusawami v. Thangammal, 35 Mad. 320 = A.I.R. 1930 Mad. 242 = 121 I.C. 833 = 31 Cr. L.J. 321.

29. D. V. Belvi v. Emperor, A.I.R. 1931 Bom. 325 = 33 Bom. L.R. 673 = 32 Cr. L.J. 1144 = 134 I.C. 344.

30. In re (Devatha) Sriramamurthy, A.I.R. 1931 Mad. 242 = 60 M.L.J. 370 = 131 I.C. 649 = 32 Cr. L.J. 763.

31. Hafiz Hazfi-ud-din v. C. Laborde, 50 All. 414 = A.I.R. 1928 All. 14 = 105 I.C. 815 = 29 Cr. L.J. 991 = 26 A.L.J. 83.

sive orders or renewing the original order at the end of two months.³² Where, however, it is desirable that the duration of the order should be extended to more than two months, the Provincial Government should be moved to extend it by notification.³³ For the Provincial Government it is also necessary to state the reasons for extension.³⁴ The period of two months is to be counted from the date of the making of the original order, and not from the date of its confirmation on a subsequent date.³⁵ A recent Patna authority lays down that the period of sixty days begins to run from the date on which notices are issued.³⁶

High Courts' power of Revision.—An order under section 144 of the Criminal Procedure Code is revisable by the High Court under section 435 of the same Code.³⁷ On the analogy of these authorities it would appear that an order passed under this section is also similarly revisable. The High Court does not however ordinarily interfere in revision either under section 435 of the Criminal Procedure Code, or section 107 of the Government of India Act, as *prima facie* the local Magistrate who is responsible for keeping the peace, is the best Judge of whether an emergency exists or not³⁸.

32. Ashutosh Roy v. Haris Chandra Chattopadhyaya, A.I.R. 1925 Cal. 625; Murari Naicken v. Aiyaswami Naicken, A.I.R. 1923 Mad. 15=69 I.C. 369=16 M. L.W. 452; Gauri Dutt v. Gobind Singh, A.I.R. 1920 Pat. 486; Rash Behari Singh v. Jagannain Rai, A.I.R. 1917 Pat. 154.

33. Swaminatha Mudaliar v. Gopala Krishna Mudaliar, A.I.R. 1916 Mad. 1106=16 Cr. L.J. 592.

34. Bhure Mal v. Emperor, A.I.R. 1923 All. 606=45 All. 526=24 Cr. L.J. 689=73 I.C. 801.

35. Thompson v. Emperor, 11 Cr. L.J. 12.

36. Puran Singh v. Mst. Ramjhari Koer, A.I.R. 1935 Pat. 224=122 I.C. 88.

37. Thakin Ba Thoung v. Emperor, 12 Rang. 238=A.I.R. 1934 Rang. 124; Francis Duke Cobridge v. Jogendra Kumar Roy, A.I.R. 1933 Cal. 348; Pitchai v. Muna, A.I.R. 1932 Mad. 720.

38. Manukhan v. Sunder Singh, A.I.R. 1934 Pat. 313; Emperor, v. Ganesh Vasudev, A.I.R. 1931 Bom. 135=55 Bom. 322=33 Bom. L.R. 59=130 I.C. 396=32 Cr. L. J. 507.

Penalty for
disobeying
order under
section 5.

6. (1) Whoever wilfully disobeys or neglects to comply with any direction contained in an order made under sub-section (1) of section 5, or in such order as altered under sub-section (4) of that section, shall be punishable with imprisonment which may extend to six months, or with fine, or with both.

(2) An offence under this section shall be an offence for which a police-officer may arrest without warrant.

NOTES.

Ingredients of the offence under this section.— Reading this section with the previous sections, we notice that for a conviction under this section the following conditions are essential :—

- (a) The order disobeyed or neglected to be complied with must have been passed by a District Magistrate or in a Presidency-town by the Chief Presidency Magistrate.
- (b) The order must be a valid order, viz., one in which all the requirements of the section have been fulfilled; because the legality of the order can be questioned in proceedings under this section.³⁹
- (c) It should be definitely proved that the accused had knowledge of the order. Knowledge by the accused cannot be presumed.⁴⁰
- (d) The order should be in force at the time when it is alleged to have been disobeyed.⁴¹
- (e) It should be proved that the accused disobeyed the order.⁴²

39. Jiarat Din v. Emperor, A.I.R. 1921 Cal. 258=67 I.C. 200=34 C.L.J. 578.

40. Shanker v. Emperor. A.I.R. 1935 All. 552; Mulraj v. Emperor, 36 P.R. 1905 (Cr.); Ram Das Singh v. Emperor. 54 Cal. 152=A.I.R. 1927 Cal. 28; Sheikh Abdul v. Emperor, A.I.R. 1927 Cal. 306=31 C.W.N. 340=100 I.C. 830.

41. Ram Das v. Emperor, A.I.R. 1920 All. 223.

42. Veeraragavulu v. Emperor, 1932 M.W.N. 1073.

- (f) The disobedience on the part of the accused must have been wilful.
- (g) The disobedience would have caused or tended to cause obstruction to the administration of a State in India or involved the risk of a danger to human life or safety or a disturbance of the public tranquillity or a riot or an affray within the said state.⁴³

7. No Court shall take cognizance of any offence punishable under section 2 unless upon complaint made by order of, or under authority from ⁴⁴[the Central Government, if the offence is committed outside British India, and the Provincial Governments in other cases.]

Cognizance of offences under section 2 by Courts.

NOTES.

Analogous Law.—This section corresponds to section 196-A of the Code of Criminal Procedure, 1898.

Object of the section.—This section is intended to ensure that a charge of conspiracy is not launched in respect of a conspiracy which is not of a sufficiently serious nature, or in other words to save an accused person from unnecessary harassment.⁴⁵

Who can authorize the filing of a complaint.—The only authorities empowered to sanction the filing of complaints under section 2 are the Central Government, or the Provincial Government. These authorities must either make an order for the filing of a complaint, or give authority to some one to file the same. No particular form of sanction is prescribed.⁴⁶ The section does not even lay down that the sanction must be in writing.

43. Dabir-ud-din Mohammad v. Emperor. A.I.R. 1930 Cal. 131=125 I.C. 273.

44. The words within brackets were substituted for the words "Governor-General in Council or the Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

45. Hiralal Das v. Emperor. A.I.R. 1934 Cal. 391.

46. Thakur Das v. Emperor, 18 Cr. L.J. 634.

Application of the section.—In order to make this section applicable it is necessary that the offence alleged to have been committed must be one within section 2. If the object of the criminal conspiracy does not fall within section 2, this section will not apply.

Effect of want of sanction.—If sanction under this section is not obtained for a prosecution under section 2, the defect is fatal to the proceedings, and a conviction obtained in the absence of such sanction must be set aside as illegal;⁴⁷ but it has been held by the Calcutta High Court that if sanction is obtained pending the trial and the accused is not prejudiced, the conviction need not be set aside⁴⁸.

47. Mohamed Bachal Abdullah v. Emperor, A.I.R. 1934 Sindh, 4; Hari Charan Misra v. Emperor, 12 Pat. 353=A.I.R. 1933 Pat. 273; Nibaran Chandra Bhattacharya and another v. Emperor, A.I.R. 1929 Cal. 754=33 C.W.N. 834.

48. Abdul Rahman and others v. Emperor, A.I.R. 1935 Cal. 316=156 I.C. 678=62 Cal. 749=36 Cr. L.J. 982.

PART III

PART III

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- (A) The evolution of the idea of an All India Federation and the difficulties in the way of its early realisation.
- (B) Provisions of the Government of India Act, 1935, relating to the accession of the Indian States to the Federation of India.

(A) THE EVOLUTION OF THE IDEA OF AN ALL-INDIA FEDERATION AND THE DIFFICULTIES IN THE WAY OF ITS EARLY REALISATION.

The appointment of the Simon Commission in 1927 and the consequent intensive agitation in British India for the early establishment of dominion form of Government, brought the question of the future relations of the Indian Government and the states to the fore. The Simon Commission itself addressed a letter to the Prime Minister in October 1929, and drew attention to the importance, when considering the direction which the future constitution of India is likely to take, of bearing in mind the relations which may develop between "British India and the Indian States." "The Commission recommended the examination of the relationship between these two constituent parts of the Greater India, and further recommended that a conference should be called to which representatives of both British India and the Indian States should be invited." In the same month Lord Irwin, the Viceroy of India, made his historic announcement on behalf of His Majesty's Government, that in their judgment it is implicit in the Declaration of 1917 that the natural issue of India's constitutional progress, as there contemplated, is the attainment of Dominion Status. The Viceroy further declared that a Round Table Conference would soon be held in which His Majesty's Government would meet representatives both from British India and Indian States, for the purpose of seeking the greatest possible agreement for the final proposals—to submit to Parliament.

The above events naturally made the Indian Princes anxious to know, what position the Indian States would occupy *vis-a-vis* an Indian Government in British India? Would the rights claimed

under paramountcy descend, to British India? How will the problem of defence affect the treaty rights of the states? Accordingly informal private discussions were held between Maharaja Patiala, the then Chancellor of the Chamber of Princes and some prominent liberal British India leaders. The idea of an All-India Federation really emerged from these discussions, and was developed through further discussions carried on between the delegates to the Round Table Conference, on their way to London.

Every section of the first Round Table Conference enthusiastically supported the idea of an All-India Federation, though perhaps no one had any clear idea of the ultimate form such a federal constitution would assume. H. H. the Maharaja of Patiala, the Chancellor of the Chamber of Princes said, "the main principle of Federation stands acceptable, and I echo the confident hope expressed the other day by His Highness the Maharaja of Bikaner, that by far the larger proportion of states will come into the federal structure at once, and that the remainder will soon follow." His Highness further stated, "we have all made it clear, however, that we consider certain things to be essential. We can only federate with a British India which has self-government and not with a British India governed as it is at present."

The task of drawing up the federal part of the constitution was entrusted to a committee of the Round Table Conference, known as the Federal Structure Sub-Committee, which produced a skeleton scheme, showing the broad outlines of the Federal Constitution.

Princes' reaction to Sankey scheme of Federation.—A section of the Princes, on a detailed consideration of the Federal scheme, realised that their position in the proposed Federation would be rather risky, as in their opinion, adequate safeguards had not been incorporated in that scheme. They accordingly pressed that "the states will join an All-India Fede-

ration on the assumption that the Crown will accept responsibility for securing to them the following guarantees :—

- (1) that the necessary safeguards will be embodied in the constitution ;
- (2) that under the constitution, their rights arising from Treaties, or Sanads or Engagements, remain inviolate and inviolable ;
- (3) that the sovereignty and internal independence of the states remain intact and are preserved and fully respected and stated that obligations of the Crown to the states remain unaltered."

After prolonged and lengthy discussions at the successive Round Table Conferences, final proposals of His Majesty's Government for Indian Constitutional Reforms were embodied in a White Paper, which was submitted to the examination of a Joint Select Committee of the both Houses of Parliament.

Some of the safeguards formulated by the Princes, were found not to have been incorporated in the White Paper scheme. Serious objections were raised in regard to direct taxation and to constituent powers vested in the Federation. The Viceroy, however, assured the Princes, that they could make further representations on these points, before the Joint Parliamentary Committee. Accordingly Sir Manubhai Mehta and Nawab Sir Liaqat Hyat Khan were sent as delegates, on behalf of the Princes, to the Joint Select Committee and in the Memorandum submitted by them, on behalf of the states, they claimed the full quota of seats reserved for the representatives of the states, irrespective of the number of states joining the Federation, and immunity from any form of direct taxation. It was also urged that the Federal Senate should enjoy equal powers with the Federal Assembly, including the power of purse.

The Joint Select Committee's Report was published in November 1934, and a Bill, based on its recommendations was soon after introduced in Parliament. The Princes thereupon engaged the services of eminent lawyers like Mr. Wilford Greene, K.C., Professor J.H. Morgan, K.C., and Mr. Lennox McNair, to scrutinise and examine the Joint Parliamentary Committee Report and the Bill, from the legal point of view. Another committee consisting of some of the most prominent ministers of the states was appointed to examine the Bill, from the administrative point of view.

In the meantime the Princes met, in an informal meeting, held in Bombay in February 1935, to consider the provisions of the draft Bill, before Parliament. Discussion amongst the Princes revealed, that the draft Bill contained certain provisions especially relating to accession of states to the Federation, which were not at all acceptable to the Princes. The Secretary of State, realising the gravity of the situation, arising out of Princes' dissatisfaction, with the provisions of the Bill, readily agreed to introduce necessary amendments to meet the states' point of view. Clause 6 of the Bill was accordingly amended, to make it clear that a ruler of a state accedes to the Federation by virtue of his instrument of accession and not of the Act. The provisions in case of a breakdown of the constitution were also amended, with a view to bringing the period of the Viceroy's dictatorial powers under stricter Parliamentary control, and to limit such a period to three years.

The Government of India Bill, after a chequered career in both Houses of Parliament, was finally passed on July 24 and received the Royal Assent on August 2, 1935.

Negotiations with the Princes to facilitate their entry into the Federation.—With the enactment of the Government of India Act of 1935, the British Government in India, became anxious, that the Princes should make up their mind to accede to the All-India Federation at an early date. With this end in view, the Viceroy's representatives have been visiting the individual states

to explain and clarify the implications of their entry into the Federation. The Princes have also been meeting in committees and conferences to discuss and analyse the provisions of the Government of India Act and the draft Instrument of Accession prepared by the Government of India. But up to this time they have not been able, finally to make up their minds, whether they should or should not accede to the proposed Federation. This hesitancy and timidity on the part of the states in making a final decision, is not strange, as recently pointed out by Sir Kailas Haksor :

“It does not strike me as at all strange,” he said, “that the States are nervous. Their experience of the last 18 years tends to make them nervous, and the fact that in some federations at least the verdicts of the Federal Court have extinguished rights believed to have been safeguarded by the provisions of the Act is not exactly reassuring ”

“True, such hesitation is in some, possibly a large, measure, due to vague apprehensions. It is also due to the inability of the authorities to give positive assurances as to the future in respect of specific issues. The hesitation of the authorities is due less to their want of knowledge of the intentions of definite provisions of the Act than to their inability to anticipate the interpretations of those provisions by the Federal Court.

Justification.—“Also, there is some justification, at any rate at the present stage, for the hesitancy or timidity of the states in taking a plunge to bring Federation into being. In effect, they are asked to place their trust in the protecting arm of the Governor-General, upon whom has been laid a special responsibility to protect them. Those of you who are familiar with the Government of India Act of 1935 will recall the provisions of Section 12.

“Apart from the fact that, so far as the states are concerned,

that section leaves to the Governor-General the widest possible discretion, the states imagine—rightly or wrongly—that when Federation is functioning, the pressure exerted on the Governor-General by so many convergent forces will be so great and the merits, in the abstract, of policies favoured by the country at large will be so compelling that, with the best will in the world he might find it impossible to protect ‘the rights of any Indian state,’ which is how clause (g) of sub-section (1) of that section is worded.

“But it is not merely the inadequacy of the so-called protecting provisions of the Act which appears to be worrying the states. There are other considerations.

“The Chapter on finance, more particularly the specific Sections in that Chapter, read with the Federal Legislative List, place obligations upon the states the incidence of which, it has been admitted, cannot be definitely estimated. I am referring to sections 137, 138, 139 and 140.

Obligation.—“The first of these Sections, while dealing with sources of revenue the yield of which is distributable amongst the provinces and the states, provides for a surcharge which may be levied for Federal purposes. The provisions of Section 138 also lay upon the states the obligation to pay surcharge on Income-Tax. By Section 139 the states become responsible, after ten years have elapsed from the establishment of Federation, to pay to the Federation the proceeds of the Corporation Tax or an equivalent. Section 140 deals with Salt duties, Excise duties, and Export duties, and it lays down that if an Act of the Federal Legislature so provides, the net proceeds may be distributed amongst the provinces and the states in accordance with such principles of distribution as may be formulated by the Act which imposes those duties.

“As far as I am aware, nobody has yet been able to say

what the incidence of the surcharge under Section 137 is likely to be, nor, so far as the states are concerned, how the recoverable amount of surcharge under Section 138 is going to be calculated, while the prospects of the distribution of Excise duties are, by the States, regarded as remote.

Again discussing the question of sovereignty he observed :—

“You are all aware how sensitive the states are on the subject of their sovereignty, which has been upheld by judicial decisions. However, limited that sovereignty may be as the result of historical rivalry or political practice, the Austinian School of Jurists and all authorities on Constitutional Law regard the measure of sovereignty still enjoyed by the states and their Rulers as a real sovereignty. The admission that the Rulers of the States can only accede to the Federation by an act of their own volition—that is, by voluntarily signing an Instrument, also makes it clear that the Act of 1935, in recognition of the consensus of authoritative opinion, sets out to bring Federation into being by suggesting to the states that they delegate the necessary measure of their sovereignty to the future Federation.

“It is again in recognition of their sovereignty that subsection (2) of section 6 of the Act of 1935 leaves it to the states to specify the matters with respect to which the Federal Legislature may make laws for them and the limitations to which the power of the Federal Legislature to make laws and the exercise of the executive authority of the Federation in the states would be respectively subject.

“Now, it must be appreciated that irrespective of the question of sovereignty, the states, for purposes of internal administration, have been autonomous—the larger states completely so; the others, perhaps, in a comparatively lesser measure. The

question, therefore, arises, that they are bound to take into consideration the fact to what extent this internal autonomy would be affected by their entry into Federation."

Mr. Morgan's opinion.—Mr. J. H. Morgan, whose opinion as a lawyer, was sought, by the Chancellor of the Chamber of Princes, on the Government of India Act and the Draft Instrument of Accession, submitted the following report:—

Sovereignty.—Dealing with transformation in the scope and character of the sovereignty of the states in the event of their accession, which is affected by the Act, Mr. Morgan says: "Their sovereignty is very considerably impaired and wholly transformed. In this respect the Act itself is quite as revolutionary as was the original Bill."

The amendments put up by Mr. Morgan and his colleagues were to a considerable extent not accepted by the India Office, while the effect of their acceptance in other cases was merely verbal.

During the passage of the Government of India Bill some of the leading Princes, in a communication to the Government, formulated certain observations on the Bill, expressing apprehensions at "the fundamental points" put forward by them not being accepted.

"As a result of their objections, certain amendments were accepted by the Government and duly passed. These amendments were purely verbal and quite illusory. They have not changed the legal effect of the original draft of Section 6 of the Act in the slightest degree.

"To legislate for a Federated State is to legislate for the subjects of the Ruler of that State and it matters not whether the subjects are expressly mentioned as coming within the scope

of the Federal Legislative authority or whether they are not so mentioned.

“There can be no question that power to legislate ‘for British India’ means the power to legislate for all subjects of His Majesty in British India and, indeed, for everybody else resident therein.

“It is, therefore, obvious that the subjects of every Ruler of a Federated State will be just as much subjected and as directly subjected to the Federal authority as His Majesty’s subjects. Their allegiance would henceforth be divided between their Ruler and the Federation.”

Turning from the legislative sphere to the executive, Mr. Morgan states: “It is of the utmost importance that the Princes should bear in mind that the coercive power of the Federal Government in securing federal legislation to compel the states to carry out any executive obligations imposed on them is quite unlimited under the Act.

“The Federal Legislature is, as has been well said in the Canadian case, omnipotent within the Federal sphere and, although the states hope and expect that enforcement of the Federal obligations upon a state will be confined to the Viceroy in the exercise of paramountcy, it is not so confined either in the Act or in the Draft Instrument of Accession.

“It remains, therefore, to consider this ‘explanatory memorandum’ in the light of the ‘Federal Union’. A Federal Union means in law the surrender of sovereignty and an irrevocable surrender.”

Amendment.—Mr. Morgan concludes his observations on the sovereignty of the states according to Federation in relation to amendment of the Constitution Act. He says: “The subject of the amendment may be looked upon from two points of view—(1) amendment of the Act on the initiative of the states and (2)

amendments of the Act in opposition to the wishes of the states, but on the initiative of Imperial Government or Federal Government.

As regards the first case, the states may at some future date find their rights, authority and powers so seriously curtailed as a result of the judicial construction of the Act as to move them to petition the Government and Parliament of Great Britain to amend the Act in such a manner as to restore the construction, which the Rulers of the states had put upon the Act when they had decided to accede to the Federation.

“This is, of course, the only way in which a judgment of the Supreme Court of Appeal, interpreting the Act of Parliament in a sense contrary to that intended by the Legislature which passed it or to the intentions of the parties who promoted it, can be corrected.

“The possibility of such a remedy is not excluded by the Act, but, as a matter of constitutional practice, it is extremely unlikely that the Government and Parliament of Great Britain would consent to give effect to any such petition on the part of the states.

“*Indissoluble*”.—“The question of constitutional amendment has an important bearing upon the ‘indissoluble’ character of the Federal Union, which will be created by the accession of the states. The word ‘indissoluble’ is nowhere used in the Act as it is in the Preamble to the Federal Constitution of Australia. But the Union is just as indissoluble as in the case of the Australian Commonwealth and in the same sense.

“The states, according to Federation, have no right of secession and secession is only possible if the Imperial Parliament at the request of the states amends the Act to that effect.

“This, it may be taken as certain that the Imperial Parliament will, as a matter of constitutional practice, never consent to do. To do so would be to negative the ‘pledge’ of the ultimate

grant of Dominion Status made by the Secretary of State during the passage of the Bill through the House of Commons."

Mr. Morgan next deals with the question of interpretation of the Federal constitution within the Empire and says: "It is an historical fact that always and everywhere contracting parties to a Federal constitution have found that, as a result of judicial construction, the Federal contract has turned out to have a meaning which they never intended when they made it.

"On the whole, this judicial construction has resulted in their finding that they have given up power, rights and authority, which they never intended to give up.

"Nonetheless, the surrender of these rights has proved to be irrevocable. It could only be revoked either by secession, in other words, withdrawal from the Federation or by an amendment at the instance of the states of the Federal constitution. Neither course will be open to the states, once they have acceded to Federation."

Accession.—Referring to the Instrument of Accession, Mr Morgan says: "Even if the Instruments are to be regarded as treaties in the sense accorded to such agreements in international law, it must be taken as certain that any extrinsic evidence of what was said or done in the negotiations preceding the accession of the states to Federation will be held by the Privy Council to be totally inadmissible as evidence of the meaning of the Instruments or of the intention of the parties, the Crown, on the one hand, and the Rulers, on the other, who made it.

"The English Courts, in construing a treaty, follow the same rules as they apply to the construction of statutes and other instruments, namely, that 'the text must be construed as it now stands in the ratified convention and the intention of its proposers is immaterial.'"

Dealing with the Instrument of Instructions, Mr. Morgan says: "It will be recalled that various proposals have been made for inclusion in the Instrument of Instructions to the Governor-General of provisions for the protection of the rights and interests of the states in particular in such matters as 'discrimination.'

"The question arises as to what, if any, legal efficacy is to be attached to the Instrument of Instruction. The provisions of the Instrument of Instructions are unenforceable in law and the silent operation of the constitutional principles may and probably will in the long run result in the 'safeguards' contained in the Instrument becoming a dead letter.

Dominion Status.—"Even as things stand at the present moment and without anticipating the grant—which may be either proximate or remote—of Dominion Status to Federated India, the safeguards provided by the Instrument of Instruction are by no means so safe as may appear.

"It is hardly necessary for me to say that in my observations on the weakness of the Instrument of Instructions as a safeguard for the protection of the rights of the states, no reflection whatsoever on the good faith of the Government, which is responsible for it, is intended.

"So long as that Government is in power, there can be no reason to doubt that the Instrument will be honourably observed, alike in the letter and in the spirit. But a Government, equally with Parliament, to which it is responsible, cannot bind its successors.

"As things are, therefore, the Instrument will hold good as a safeguard for just three years and no more. What may happen after the dissolution of the present Parliament, it is idle to speculate."

As regards the Federal Legislative list, Mr. Morgan says: "The states must really bear in mind that there will have to be a definite limit to limitations. In other words, Federation will never be brought into existence and will certainly never become a working proposition, if it is sought to impose limitations on the acceptance of items in the Legislative List, such as would prevent the Federal Legislature from legislating effectively at all."

Responsible Government.—Referring to the executive power of the Federation, Mr. Morgan says: "It will be impossible to institute, much more to develop, responsible government in the Federation if the executive power is reserved to the states. The whole idea of responsible government is that the Federal Executive should be responsible to the Federal Legislature."

"If the states are allowed to reserve to themselves executive power, the Federal Government, so far as the states are concerned, will be shorn of its responsibility to the Federal Legislature. The states must really make up their minds either to accept a share in the Government of Federation or to remain outside the Federation altogether."

Regarding paramountcy, Mr. Morgan declares: "Dualism of office of the Governor-General contemplated by the Act itself seems to be an artificial one and must result either in the Viceroy being completely absorbed in the Governor-General, or in the separation of the two offices by their assignment to two separate persons. This separation is bound to come if and when Dominion Status is granted to India."

Want of harmony.—Concluding, Mr. Morgan says: "Most of the imperfections of the Federal constitution are due to the fact that the authors of it have had to incorporate in one and the same political structure two fundamentally different polities, the Indian States and the provinces of British India."

"This is the explanation for a certain want of harmony in the design. The constitution is like a building, which, begun in one style of architecture, is to be completed in another—in part Gothic, in part Renaissance—and it may well be that the distribution of the stresses and the strain of the structure will appear in the course of time unequal to the burden of its support. In that case an amendment will become inevitable.

"It conforms to no theory of Federation, as such there be, but it is none the worse for that. It is empirical, but so is the British constitution and the British constitution has endured while more fanciful constitutions have long since passed away."

Sir Tej Bahadur's views.—Sir Tej Bahadur Sapru, who was consulted by the Maharaja of Patiala on some of the points arising out of Mr. Morgan's opinion referred to above, is in vital disagreement with Mr. Morgan's views.

Sir Tej Bahadur begins by discussing the peculiar characteristics of the Indian Federation from the Federations in Canada and Australia and says that while cases coming up for discussion before the Privy Council or Federal Courts are useful up to a point they are not conclusive guides for questions which might arise under the present constitution. It would, therefore, not be proper to be dogmatic on any issue at this stage and create fears and confusions where none would probably at all exist.

Question of secession.—With regard to the question of secession in the event of a breakdown of the constitutional machinery under section 45 of the Government of India Act, Sir Tej Bahadur is of the opinion that no provision has been made in the Act as to what the step would be. Secession is not contemplated in the Act but in the event of any deadlock or of an

extraordinary situation arising the remedy would lie in the direction of extra legal or extra judicial negotiations with the Crown.

Questions were put to Sir Tej Bahadur Sapru in order to obtain definite opinion on some of the important issues the most important of them being: How is the sovereignty of a state affected by the Act except in so far as it has been voluntarily conceded by the Instrument of Accession?

Sir Tej Bahadur Sapru's reply to this was:—Beyond the Instrument of Accession the Sovereignty of states is not affected.

Is the Instrument of Accession a final and complete limitation on the authority of the Federal Courts and the Privy Council?

Sir T. B. Sapru's answer to this question was in the affirmative.

Has Parliament the power to legislate amending the protected provisions of the Act without in substance affecting the Federation as established under this Act?

His answer was that the states were acceding to Federation as established under this Act, therefore, any fundamental change in the protected provisions of the Act would be putting an end to the Federation established under this Act. Therefore the Instrument of Accession would have spent itself and the agreement between the states and the Crown in that behalf would necessarily come to an end. The omnipotence of Parliament is not denied but amendment of protected provisions would necessarily mean termination of the existing understanding.

Can the Instrument of Instruction be disregarded by the Secretary of State rendering thereby the protection afforded to the states in the special powers of the Governor-General nugatory?

Sir Tej Bahadur Sapru's answer to this question was in the negative. He said it would be no violent assumption on the part of the states to think that the Secretary of State would act honestly and he would conform to the high traditions of public integrity. In the event of any such instruction being disregarded by the Secretary of State, there would be enough remedies to bring him to book beyond the one of impeachment which, in these days, might be considered by some as obsolete and rusty weapon.

Is it open to the Federation to confiscate money lying in a state bank or in a bank in British India to satisfy a Federal claim against a federating state?

Sir Tej Bahadur Sapru's answer was in the negative.

Decrees of the Federal Court are declaratory and, therefore, cannot be executed as other decrees. There is no provision in the Act of the passing of special legislation confiscating such monies.

Report of Constitution Committee.—The Constitution Committee appointed by the Chamber of Princes, submitted the following unanimous report :—

The Committee met from January 25 to February 6, 1937, and the present report deals with the conclusions unanimously arrived at by the Committee in respect of the general form of the Instrument of Accession, Treaty and other rights within the Federal sphere, Administration and the Federal Legislative List.

The Committee desire to make it clear that the present report forms only the first part of the full report and that it is proposed to meet again shortly in order to consider other matters affecting Accession.

The Committee had before them both the essential and the

negotiable safeguards, suggested by the Chamber of Princes in 1933, and have examined them with a view to ascertaining how far they had been met by the Government of India Act, 1935, and by the proposed draft Instrument of Accession.

Safeguards met.—Upon careful consideration they have come to the conclusion that the safeguards have been substantially met and that, in so far as they have not been met or remain open to doubt, the recommendations suggested below will effectively achieve the objects, which the safeguards were designed to serve. Nor are the recommendations conceived only in the light of the safeguards thus formulated; they represent conclusions arrived at independently by an examination of the Act and of the Draft Instrument and by an appreciation of that they consider to be essential in the interests of the states.

Accession.—The Committee first considered the general form of the Instrument of Accession.

The Committee are unanimously of the view that the clause dealing with "purpose," which is altogether new, should be entirely omitted. They consider that objection to the use of such terms as "united" is secondary in comparison with the consideration that the statement of a political ideal in a legal document may cause a tendency to set in which may have undesirable consequences whenever a matter of doubt or difficulty arises in regard to the construction of a particular clause.

The omission of the clause would in no sense detract from the constitutional value of the Instrument as governing the accession of the states and the Committee are convinced that the omission of the clause should be strongly urged.

It is felt, however, that the mention of the parties to the Federation, as made in the clause, should remain, and the Committee recommend that, in view of the proposed omission of the clause itself the following words should be inserted in the third

recital to the Instrument after the words "Federation of India" :—

"Consisting of the Rulers of Indian States, the Provinces called Governors' Provinces, and the Provinces called Chief Commissioners' Provinces."

The order in which the constituent units have been mentioned above is in accordance with unvaried past practice:

Federal Powers.—Clause 3 of the State's Draft Instrument of Accession of the 9th July, 1936, has not been included in the Government of India draft: The Committee desire to propose an amendment to that clause as follows :—

"No function in respect of any matters specified in the first Schedule hereto or under any provision of the Act which applies to this state by virtue of this Instrument of Accession shall be exercised in relation to this state by any authority other than a Federal authority and save in accordance with the terms of this Instrument."

The object of this clause is partly covered by section 294 (2) of the Act, which prevents the exercise of federal powers inside the state otherwise than by the Federation. The clause itself is intended to prevent the exercise in relation to the state of federal powers outside the state otherwise than by the Federation. It also covers the Railway Tribunal which has been omitted, perhaps by inadvertance, from section 294 (2):

Moreover, there is an advantage in making it clear in the Instrument itself that federal powers and paramountcy powers cannot co-exist in respect of the same area. The argument that, if it is a gloss on the Act, it usurps the functions of the Federal Court, does not appeal to the States as the clause represents what the states understand to be the intention of section 294 (2):

If there is room for doubt as to the meaning of section 294 (2), the states are entitled to have the position clarified. If there

is no room for doubt, there appears to be no valid objection to clause 3.

The rigid insistence on the letter of the rule that the Instrument should not contain provisions, which may repeat or explain the provisions of the Act itself, may lead to difficulties which can be avoided without in any way going counter to the scheme of the Act itself.

There may be a point in saying that it is desirable that the Instrument should contain provisions, which are not in any sense inconsistent with the Act, but so far as merely making explicit what is admittedly the intention of the Act is concerned, the Committee find it difficult to see what real objection there could be to this course.

Relations with Crown.—The Committee further support the view that the following clause should be inserted after the proposed Clause 3 discussed in the preceding paragraph :

“Nothing in this Instrument shall affect the rights and obligations of the Ruler of this state in relation to the Crown with respect to any matter not within the functions exercisable by, or on behalf of, the Federation by virtue of this Instrument, and no Federal authority shall have jurisdiction with respect to such rights and obligations.”

The effect of the two clauses read together would be that no one but the Federal authorities (or the Ruler) is to perform Federal functions and that Federal authorities are not to interfere in the relations between the Crown and the Ruler.

Committee maintained their request for its inclusion.

Clause 4, paragraph 2, of the States' Draft Instrument of July 9, 1936, has not been accepted. Its object was to guard against a possible implication that the legislative powers conferred

on the Federation by particular sections of the Act are tacitly accepted by the states.

If clause 4 (2) were adopted, the Ruler, by his Instrument, would be sure that he would be accepting only such items of the Federal Legislative List and such legislative powers in the body of the Act as are specified in his Instrument.

It might be urged that the Federal Legislature will not have power to make laws for the state, except in regard to matters which have been expressly accepted in the Instrument, and that the only matter, which a state will be required to accept in the Instrument, will be the items in the Federal List.

Thus, for example, section 215 of the Act corresponds to item 53 of the Federal Legislative List and if that item is not accepted the legislative power under section 215 will not be exercisable for the state.

The proposal to implement section 138 (3) by the addition of a new item to the Federal Legislative List corresponding to it is satisfactory, but is based on an interpretation of the Act and the Instrument that the Federal Legislature will have no power to make laws for the state on any matter, unless that matter has been specifically accepted in the Instrument.

Grave consequence.—The Committee consider that if the second paragraph of the proposed clause 4 were included, this would clearly be the position: if not, the Court may take a different view.

The consequence appears so grave as not to warrant leaving the matter to the hazard of interpretation by the Federal Court.

Section 101 is not a sufficient protection by reason of the fact that it only refers one back to the Instrument and, if there is any room for doubt in the Instrument, the defect is not cured by the Act. The possibility of doubt in the Instrument arises from the

fact that by clause 1 of the Instrument the state authorises the Federal Legislature to exercise, subject to the terms of the Instrument, such functions as may be vested in them by the Act.

Prima facie, the words "such functions as may be vested in them by the Act" would include all legislative powers which under any section of the Act, read in conjunction with section 99 (1), purport to be made applicable to a state.

Section 99 (1) must itself be read in conjunction with all legislative powers conferred by the Act and it is immaterial whether a section conferring legislative power does or does not expressly mention the states, since in any case the states are brought in by section 99 (1), unless there is some other provision of the Act to exclude them.

The only other provision of the Act which might be relevant in this connection is section 101 which, as stated above, does not appear to be a sufficient protection. The clause has been pressed by the Informal Committee of Ministers in their meetings in September and December last and the present Committee desire to identify themselves with that view.

Powers of Crown.—Clause 13 of the States' Draft Instrument of July 9, 1936, has not been accepted, and an apprehension has been expressed that it might as it stands, have possible reactions on the powers of the Crown. It was not the intention of the clause that it should have such effect and in order to meet the objection the following amendment is suggested which may take the place of clause 6 of the Draft Instrument as circulated to the states :—

"Nothing in this Instrument affects the continuance of my sovereignty in and over this state or, save as provided by this Instrument or by any law of the Federal Legislature made in accordance therewith, the continuance of any of my powers,

authority and rights, and the exercise of any of such powers, authority and rights in and over this state is, save as above, reserved to me."

The Committee desire to add that the inclusion of the term "reserved," as suggested both in the present clause and in the one proposed in the draft of July 9, is important. The term was included in the Government drafts of February and March, 1935.

Protection of rights.—Clause II of the states' draft of July 9, 1936, had for its object, the protection of treaty and other rights within the Federal sphere which could be affected by Federal Legislation outside the state. The clause provided for an additional Schedule which would enumerate such rights.

The objection has been raised—(a) that the Instrument cannot deal with matters outside the state, and (b) that in any case the right of the Federal Legislature to legislate in British India or outside the state cannot be fettered by the Instrument of Accession of a state.

Further, section 12 (1) (g) of the Government of India Act has been referred to as affording protection for such rights in the Governor-General's discretion. Article XV of the Instrument of Instructions to the Governor-General, however, makes it clear that protection under section 12 (1) (g) is intended to cover rights in the non-Federal sphere

The Committee are not wedded to the form in which the protection is afforded, but share the view expressed by the Informal Committee of Ministers in their letter to Sir Bertrand Glancy, No. 68 CC dated January 21, 1937, that the protection should be legal. While leaving it to the Government of India to suggest the form in which such legal protection may be given, it is felt that the object may be gained by recourse to agree-

ments, such as those contemplated under section 204 (1) (a) (iii), between the Federation and the state which may specially be made subject to the jurisdiction of the Federal Court.

Federal Executive.—On the question of Administration, the Committee desire to explain that Federal executive authority in relation to items to which a state accedes is dealt with in five different ways in the Act and the proposed Instrument. The basic assumption as made clear in Clause 3 (2) of the Government Draft Instrument is that where there is a limitation on legislative authority there will be limitation on the executive authority.

- (a) An absolute limitation upon executive authority under section 6 (2).
- (b) An administrative agreement under section 125
- (c) An entrusting of duties under section 124 (1) conditionally or otherwise with the consent of the Ruler.
- (d) A conferment or imposition of duties under section 124 (3) for which under section 124 (4) a financial compensation shall be payable.
- (e) Where the Federal executive authority obtains, but is not exercised, concurrent executive authority will be exercisable by the states, section 8 (2).

Limitation.—The admissibility of a limitation upon Federal executive authority under section 6 (2) of the Act may possibly be questioned and it might be urged that in any case such a limitation was unlikely to be acceptable since it would exclude the possibility of the Governor-General in his discretion satisfying himself by inspection or otherwise that administration was being carried out in accordance with the Federal policy.

The Committee take the view that on the wording of the Act and particularly of section 8 (1) (ii) the admissibility of an

executive limitation under section 6 (2) is clear.

Moreover, one of the main reasons why the states objected to the original form of clause 6 in the Bill, as presented to Parliament, was that it did not permit of executive limitations differing from the legislative limitations and it was to meet this point that section 6 (2) was amended to its present form.

The Committee, therefore, considered that any rejection on principle of executive limitations should be questioned by the states. At the same time, the Committee would agree that a provision in the Administrative Agreement is generally a more suitable method of executive limitations than section 6 (2). It is thought that each case in which such limitations are proposed ought to be examined on its merits.

The method of providing for executive reservations by an Administrative Agreement under section 125, is, however, recommended only where such reservation is intended or possible and each state will have to consider the choice for itself, bearing in mind both the requirements of Federal standards and of financing the administration wherever so reserved. Similarly, each state will have to determine what items to cover by administrative agreements.

Where there is no such reservation either under section 6 (2) or under section 125, Federal executive authority will be exercised by the Federation either under section 124 (1) or under section 124 (3) and, if under the two above sections neither the Governor-General entrusts to the Ruler nor the Federal Legislature by an Act confers or imposes duties, the concurrent authority of the state, as already explained, will continue to be exercised under section 6 (2), unless the Federation prefers to implant its own Federal authority within the state.

Reservations.—The Committee have examined the items in

the Federal Legislative List with a view to suggesting (a) reservations applicable to the generality of states and (b) reservations which the Committee considered it to be necessary for protecting special interest.

They have also formulated general limitations applicable to several items and concerning such matters as land acquisition, discrimination so far as taxation is concerned and the liability of Federal Agents and Officers to the jurisdiction of the laws of the states.

In suggesting these limitations the Committee desire to make it clear that each state will have to determine the limitations under which it proposes to accept each item as it will no doubt have to consider its own individual requirements. Nor can the Committee take any responsibility for the form of the limitations suggested and it would be for each state to take competent legal advice as to see what particular form is best suited for its ends.

The Committee endorse the view expressed in the Hyderabad Memorandum, paragraph 36, which favours the strengthening of Clause XV of the Governor-General's Instrument of Instructions so as to permit the Governor-General's intervention in less serious cases of discrimination than those which may necessarily imperil the economic life of a state.

Paramountcy.—The Committee recognise that the present occasion may not be convenient for a discussion of the present question of Paramountcy, but they would recommend that the question may, in its relation to Federation be taken up in the not too distant future. The advantage of rather clarifying the practice governing the exercise of Paramountcy was recognised by the Secretary of State in his Despatch of March 14, 1936. It is difficult to believe that the exercise of Paramountcy will not be

affected by Federation and a question of no little moment may have to be considered.

Moreover, there is undoubtedly some nervousness amongst Rulers lest they may find themselves faced, even within the Federal field, by the double power of the Federation itself and Paramountcy. The states' understanding is that, broadly speaking, where the Federation can, if it wishes, exercise authority, the claim of the Paramount Power to intervene disappears.

The Committee recognise that Paramountcy is the ultimate sanction for enforcing Federal obligations, but they assume that a state will be entitled, before Paramountcy intervenes, to have those obligations determined in the Federal Court.

Reliance on Viceroy.—Perhaps the states' general thesis could best be expressed by saying that they rely on the Viceroy as the representative of His Majesty in his special and personal relationship with the states, being the friend of the states and not in any sense an agent of the Federation.

This special relationship with His Majesty is very precious to the states and they are concerned to ensure that at some future date the relationship is not weakened by the fact that the Viceroy is also Governor-General.

It can hardly be denied that the duality of personality existing in the person, who is both Governor-General and Representative of His Majesty in his relations with Indian States, has in its some elements of danger. Federal responsibilities will necessarily engross the greater part of his time and the distinction between his two personalities could without difficulty become blurred. If it did happen to become blurred, the Federal personality would almost certainly become dominant.

Separation of functions.—Perhaps, one step which could usefully be taken to avoid the dangers, which the states foresee,

would be to recognise that this duality of personality should not be repeated in the Political Service. A Resident in a state, for instance, should be the Agent of His Majesty's Representative, but never the Agent of the Governor-General, and such a separation of functions appears to be correct in theory and necessary in practice.

It obviously might prove of great inconvenience to confine the Resident to the Paramountcy side, if this would render necessary the existence of another officer as Agent of the Governor-General. It appears, however, that there is no room for such an agent.

There will be no Agent of the Governor-General in a province. Such instructions as the Federation is entitled to give a province will be given by the Governor-General to the Governor as head of the Province.

Similarly, it would seem that such instructions as the Federal Government is entitled to give should be given by the Governor-General to the department of the state concerned.

**(B) PROVISIONS OF THE GOVERNMENT OF INDIA
ACT, 1935, RELATING TO THE ACCESSION
OF THE INDIAN STATES TO THE FEDERA-
TION OF INDIA.**

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THE GOVERNMENT OF INDIA ACT, 1935

PART .

3.--(1) The Governor-General of India is appointed by His Majesty by a Commission under the Royal Sign Manual and has—

The Governor-General of India and His Majesty's Representative as regards relations with Indian States.

(a) all such powers and duties as are conferred or imposed on him by or under this Act; and

(b) such other powers of His Majesty, not being powers connected with the exercise of the functions of the Crown in its relations with Indian States, as His Majesty may be pleased to assign to him.

(2) His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States is appointed by His Majesty in like manner and has such powers and duties in connection with the exercise of those functions (not being powers or duties conferred or imposed by or under this Act on the Governor-General) as His Majesty may be pleased to assign to him.

(3) It shall be lawful for His Majesty to appoint one person to fill both the said offices.

NOTES.

Direct relations with the Crown.

The Princes had pressed their view point before the Indian States Committee that their treaties were with the Crown, and that the relation thus established could not be transferred to a new Government without their consent. The Butler Committee accepted this claim of the Princes and section 3 of the Government of India Act 1935 is based on the above recognition.

Differentiation of functions of Governor-General and Viceroy.

The Joint Committee, while differentiating the functions of Governor-

LAW OF PROTECTION OF INDIAN STATES

General and Viceroy observed as follows:—

“We have spoken above of the rights, authority and jurisdiction of the Crown in and over the territories of British India. But the Crown also possesses rights, authority and jurisdiction elsewhere in India, including those rights which are comprehended under the name of paramountcy. All these are at present exercised on behalf of the Crown, under the general control of the Secretary of State, by the Governor-General in Council; and it will be necessary that they should also be resumed in their entirety into the hands of the Crown. But clearly they cannot under the new Constitution be exercised on behalf of the Crown by any federal authority, save in so far as they fall within the federal sphere, and only then when they affect a State which has acceded to the Federation. The White Paper proposes that (subject to the exception which we have mentioned) they should in future be exercised by the representative of the Crown in his capacity as Viceroy; and that, in order to put the distinction beyond doubt, the office of Governor-General should be severed from that of Viceroy. We agree with what we conceive to be the principle underlying this proposal, but we are not clear that the method employed to give effect to it is entirely appropriate. We agree that there must be a legal differentiation of functions in the future; and it may well be that His Majesty will be pleased to constitute two separate offices for this purpose. But we assume that the two offices will continue to be held by the same person, and, this being so, we think that the title of Viceroy should attach to him in his double capacity. This suggestion involves no departure from the underlying principle of the White Paper that, outside the federal sphere, the States’ relations will be exclusively with the Crown and that the right to tender advice to the Crown in this regard will lie with His Majesty’s Government.”¹

The Com-
mander-in-
Chief in
India.

4. There shall be a Commander-in-Chief of His Majesty’s Forces in India appointed by Warrant under the Royal Sign Manual.

1. Para 158 J. C. Report,

PART II

THE FEDERATION OF INDIA

CHAPTER I

Establishment of Federation and Accession of Indian States.

5.—(1) It shall be lawful for His Majesty, if an address in that behalf has been presented to him by each House of Parliament and if the condition hereinafter mentioned is satisfied, to declare by Proclamation that as from the day therein appointed there shall be united in a Federation under the Crown, by the name of the Federation of India,—

Proclama-
tion of
Federation
of India.

(a) the Provinces hereinafter called Governors' Provinces; and

(b) the Indian States which have acceded or may thereafter accede to the Federation;

and in the Federation so established there shall be included the Provinces hereinafter called Chief Commissioners' Provinces.

(2) The condition referred to is that States—

(a) the Rulers whereof will, in accordance with the provisions contained in Part II of the First Schedule to this Act, be entitled to choose not less than fifty-two members of the Council of State; and

(b) the aggregate population whereof, as ascertained in accordance with the said provisions, amounts to at least one-half of the total population of the States as so ascertained,

have acceded to the Federation.

NOTES.

Federation.

The competence of the federal authorities will be derived from Parlia.

ment only so far as the British Indian Provinces are concerned, whereas the authority of the Federation over the acceding states will be derived from the Crown as distinct from Parliament. The procedure as laid down in the Act is that the Rulers who decide to accede to the Federation, should vest in the Crown certain powers and jurisdiction which the latter would place at the disposal of the Federation for exercise over those Rulers and their States.

Accession of sufficient number of States 'a condition precedent to Federation.

"We regard the States as an essential element in an All-India Federation; but a Federation which comprised the Provinces and only an insignificant number of the States would scarcely be deserving of the name. This is recognised in the White Paper, where it is proposed that the Federation shall be brought into existence by the issue of a Proclamation by His Majesty, but that no such Proclamation shall be issued until the Rulers of States representing not less than half the aggregate population of the States, and entitled to not less than half the seats to be allotted to the States in the Federal Upper Chamber, have signified to His Majesty their desire to accede to the Federation."²

Accession of
Indian
States.

6.—(1) A State shall be deemed to have acceded to the Federation if His Majesty has signified his acceptance of an Instrument of Accession executed by the Ruler thereof, whereby the Ruler for himself, his heirs and successors—

- (a) declares that he accedes to the Federation as established under this Act, with the intent that His Majesty the King, the Governor-General of India, the Federal Legislature, the Federal Court and any other Federal authority established for the purposes of the Federation shall, by virtue of his Instrument of Accession, but subject always to the terms thereof, and for the purposes only of the Federation, exercise in relation to his State such functions as may be vested in them by or under this Act; and
- (b) assumes the obligation of ensuring that due effect is given within his State to the provisions of this

2. Para 157, page 88, J. C. Report.

Act so far as they are applicable therein by virtue of his Instrument of Accession :

Provided that an Instrument of Accession may be executed conditionally on the establishment of the Federation on or before a specified date, and in that case the State shall not be deemed to have acceded to the Federation if the Federation is not established until after that date.

(2) An Instrument of Accession shall specify the matters which the Ruler accepts as matters with respect to which the Federal Legislature may make laws for his State, and the limitations, if any, to which the power of the Federal Legislature to make laws for his State, and the exercise of the executive authority of the Federation in his State, are respectively to be subject.

(3) A Ruler may, by a supplementary Instrument executed by him and accepted by His Majesty, vary the Instrument of Accession of his State by extending the functions which by virtue of that Instrument are exercisable by His Majesty or any Federal Authority in relation to his State.

(4) Nothing in this section shall be construed as requiring His Majesty to accept any Instrument of Accession or supplementary Instrument unless he considers it proper so to do, or as empowering His Majesty to accept any such Instrument if it appears to him that the terms thereof are inconsistent with the scheme of Federation embodied in this Act :

Provided that after the establishment of the Federation, if any Instrument has in fact been accepted by His Majesty, the validity of that Instrument or of any of its provisions shall not be called in question and the provisions of this Act shall, in relation to the State, have effect subject to the provisions of the Instrument.

(5) It shall be a term of every Instrument of Accession that the provisions of this Act mentioned in the Second Schedule

thereto may, without affecting the accession of the State, be amended by or by authority of Parliament, but no such amendment shall, unless it is accepted by the Ruler in a supplementary Instrument, be construed as extending the functions which by virtue of the Instrument are exercisable by His Majesty or any Federal Authority in relation to the State.

(6) An Instrument of Accession or supplementary Instrument shall not be valid unless it is executed by the Ruler himself, but subject as aforesaid, references in this Act to the Ruler of a State include references to any persons for the time being exercising the powers of the Ruler of the State, whether by reason of the Ruler's minority or for any other reason.

(7) After the establishment of the Federation the request of a Ruler that his State may be admitted to the Federation shall be transmitted to His Majesty through the Governor-General, and after the expiration of twenty years from the establishment of the Federation the Governor-General, shall not transmit to His Majesty any such request until there has been presented to him by each Chamber of the Federal Legislature, for submission to His Majesty, an address praying that His Majesty may be pleased to admit the State into the Federation.

(8) In this Act a State which has acceded to the Federation is referred to as a Federated State, and the Instrument by virtue of which a State has so acceded, construed together with any supplementary Instrument executed under this section, is referred to as the Instrument of Accession of that State.

(9) As soon as may be after any Instrument of Accession or supplementary Instrument has been accepted by His Majesty under this section, copies of the Instrument and of His Majesty's

Acceptance thereof shall be laid before Parliament, and all Courts shall take judicial notice of every such Instrument and Acceptance.

NOTES.

Accession of Indian States.

The Princes desired that the Instrument of Accession should be bilateral agreement of the character of a treaty. Sir Samuel Hoare, the Secretary of State for India, however declined to recognise that this instrument was a treaty. He said; "These instruments are 'bilateral' in so far as they have no binding force until His Majesty has signified his acceptance of them. But His Majesty's Government cannot on that ground accept the view that they are to be described as 'treaties.' Such rights and obligations as flow from the execution and acceptance of an Instrument of Accession are to be found in the terms of the Act, subject only to those conditions and limitations set out in the Instrument for which the Act makes provision. The Crown assumes no obligation by virtue of its acceptance of the Instrument of Accession other than those which are defined in the Act."³

The Instrument of Accession, as now, provided for in the Act, is a declaration by a Ruler which on acceptance by His Majesty *ipso facto* brings the Ruler into the scheme of the Federal Constitution.

Instruments should, as far as possible, follow a standard form.

"It would, we think, be very desirable that the Instruments of Accession should in all cases be in the same form, though we recognise that the list of subjects accepted by the Ruler as Federal may not be identical in the case of every State. Questions may arise hereafter whether the Federal Government or the Federal Legislature were competent in relation to a particular State to do certain things or to make certain laws, and the Federal Court may be called upon to pronounce upon them; and it would in our opinion be very unfortunate if the Court found itself compelled in any case to base its decision upon some expression or phraseology peculiar to the Instrument under review and not found in other Instruments. Next, we think that the lists of subjects accepted as Federal by Rulers willing to accede to the Federation ought to differ from one another as little as possible, and that a Ruler who desires in his own case to except, or to

reserve, subjects which appear in what we may perhaps describe as the standard list of Federal subjects in relation to the States, ought to be invited to justify the exception or reservation before his accession is accepted by the Crown. We do not doubt that there are States which will be able to make out a good case for the exception or reservation of certain subjects, some by reason of existing treaty rights, others because they have long enjoyed special privileges (as for example in connection with postal arrangements, and even currency or coinage) in matters which will henceforward be the concern of the Federation; but in our judgment it is important that deviations from the standard list should be regarded in all cases as exceptional and not be admitted as of course. We do not need to say that the accession of all States to the Federation will be welcome; but there can be no obligation on the Crown to accept an accession, where the exceptions or reservations sought to be made by the Ruler are such as to make the accession illusory or merely colourable."⁴

Rulers' Instruments of Accession.

"It is proposed that the Ruler of a State shall signify to the Crown his willingness to accede to the Federation by executing an Instrument of Accession; and this Instrument (whatever form it may take) will, we assume, enable the powers and jurisdiction of the Ruler, in respect of those matters which he has agreed to recognise as Federal subjects, to be exercised by the Federal authorities brought into existence by the Constitution Act; that is to say, the Governor-General, the Federal Legislature, and the Federal Court, but strictly within the limits defined by the Instrument of Accession. Outside these limits the autonomy of the States and their relations with the Crown will not be affected in any way by the Constitution Act. The list of exclusively federal subjects is set out in List I of Appendix VI to the White Paper, to which we have already drawn attention, and we understand the hope of His Majesty's Government to be that Rulers who accede will in general be willing to accept items 1 to 48 of List I as federal subjects."⁵

Sub-section (3).

The only variation of an Instrument of Accession permissible under this sub-section is variation to extend the federal powers. The Act does not provide for the resumption by a Ruler whether by agreement

4. Para 156, page 87, J.C. Report.

5. Para 155, page 86. J.C. Report.

or otherwise, of a subject once surrendered to the Federation. This will certainly help in the expansion of the Federal Jurisdiction and might in course of time result in the establishment of a fully National Government in the whole of India.

Sub-section (9): amendment of the Constitution.

Each Instrument of Accession must provide that a number of provisions of the Act in Schedule II may be amended without affecting the accession of the State, but no such amendment, unless accepted by a supplementary instrument, may extend the functions exercisable by any authority in respect of the state. In view of the improbability of any early amendment of the exempted portions by Parliament, the provision is probably of no immediate importance, but it may well prove to raise very difficult questions, should it later be desired to alter the provisions excepted from the general rule. Thus apparently any change as regards the position of the Governor-General towards the issue of external affairs and defence would not be consistent with the positions of the States. The Act is silent as to the position in such an event; it would certainly be open to any state to argue that such action was equivalent to a breach of the Instrument of Accession but there is no legal means provided under which the state could attain redress. On the other hand from the point of view of British India it may seem that a complete bar to full responsibility is presented.⁶

CHAPTER II

The Federal Executive.

The Governor-General.

7.—(1) Subject to the provisions of this Act, the executive authority of the Federation shall be exercised on behalf of His Majesty by the Governor-General, either directly or through officers subordinate to him, but nothing in this section shall prevent the Federal Legislature from conferring functions upon subordinate authorities, or be deemed to transfer to the Governor-General

Functions
of
Governor-
General.

6. Keith, Constitutional History of India, 1600—1935; pages 328—329.

any functions conferred by any existing Indian law on any Court, judge or officer, or on any local or other authority.

(2) References in this Act to the functions of the Governor-General shall be construed as references to his powers and duties in the exercise of the executive authority of the Federation and to any other powers and duties conferred or imposed on him as Governor-General by or under this Act, other than powers exercisable by him by reason that they have been assigned to him by His Majesty under Part I of this Act.

(3) The provisions of the Third Schedule to this Act shall have effect with respect to the salary and allowances of the Governor-General and the provision to be made for enabling him to discharge conveniently and with dignity the duties of his office.

Extent of
executive
authority
of the
Federation.

8.—(1) Subject to the provisions of this Act, the executive authority of the Federation extends—

- (a) to the matters with respect to which the Federal Legislature has power to make laws;
- (b) to the raising in British India on behalf of His Majesty of naval, military and air forces and to the governance of His Majesty's forces borne on the Indian establishment;
- (c) to the exercise of such rights, authority and jurisdiction as are exercisable by His Majesty by treaty, grant, usage, sufferance, or otherwise in and in relation to the tribal areas;

Provided that—

- (i) the said authority does not, save as expressly provided in this Act, extend in any Province to matters with respect to which the Provincial Legislature has power to make laws;

- (ii) the said authority does not, save as expressly provided in this Act, extend in any Federated State save to matters with respect to which the Federal Legislature has power to make laws for that State, and the exercise thereof in each State shall be subject to such limitations, if any, as may be specified in the Instrument of Accession of the State;
- (iii) the said authority does not extend to the enlistment or enrolment in any forces raised in India of any person unless he is either a subject of His Majesty or a native of India or of territories adjacent to India; and
- (iv) commissions in any such force shall be granted by His Majesty save in so far as he may be pleased to delegate that power by virtue of the provisions of Part I of this Act or otherwise.

(2) The executive authority of the Ruler of a Federated State shall notwithstanding anything in this section, continue to be exercisable in that State with respect to matters with respect to which the Federal Legislature has power to make laws for that State except in so far as the executive authority of the Federation becomes exercisable in the State to the exclusion of the executive authority of the Ruler by virtue of a Federal law.

NOTES.

Sub-section (2).

In relation to a State which is a member of the Federation the executive authority will only extend to such matters as the Ruler has accepted as falling within the federal sphere by his Instrument of Accession.⁷

7. Para 165, page 92, J. C. Report.

Administration of Federal Affairs.

Council of
Ministers.

9.—(1) There shall be a council of ministers not exceeding ten in number, to aid and advise the Governor-General in the exercise of his functions, except in so far as he is by or under this Act required to exercise his functions or any of them in his discretion :

Provided that nothing in this sub-section shall be construed as preventing the Governor-General from exercising his individual judgment in any case where by or under this Act he is required so to do.

(2) The Governor-General in his discretion may preside at meetings of the council of ministers.

(3) If any question arises whether any matter is or is not a matter as respects which the Governor-General is by or under this Act required to act in his discretion or to exercise his individual judgment, the decision of the Governor-General in his discretion shall be final, and the validity of anything done by the Governor-General shall not be called in question on the ground that he ought or ought not to have acted in his discretion, or ought or ought not to have exercised his individual judgment.

Other pro-
visions as
to Ministers.

10.—(1) The Governor-General's ministers shall be chosen and summoned by him, shall be sworn as members of the council, and shall hold office during his pleasure.

(2) A minister who for any period of six consecutive months is not a member of either Chamber of the Federal Legislature shall at the expiration of that period cease to be a minister.

(3) The salaries of ministers shall be such as the Federal Legislature may from time to time by Act determine and, until the Federal Legislature so determine, shall be determined by the Governor-General :

Provided that the salary of a minister shall not be varied during his term of office.

(4) The question whether any and, if so, what advice was tendered by ministers to the Governor-General shall not be inquired into in any Court.

(5) The functions of the Governor-General with respect to the choosing and summoning and the dismissal of ministers, and with respect to the determination of their salaries, shall be exercised by him in his discretion.

11.—(1) The functions of the Governor-General with respect to defence and ecclesiastical affairs and with respect to external affairs, except the relations between the Federation and any part of His Majesty's dominions, shall be exercised by him in his discretion; and his functions in or in relation to the tribal areas shall be similarly exercised.

Provisions
as to defence,
ecclesiastical
affairs, external
affairs and the
tribal areas.

(2) To assist him in the exercise of those functions the Governor-General may appoint counsellors, not exceeding three in number, whose salaries and conditions of service shall be such as may be prescribed by His Majesty in Council.

12.—(1) In the exercise of his functions the Governor-General shall have the following special responsibilities, that is to say,—

Special
responsi-
bility of
Governor-
General.

- (a) the prevention of any grave menace to the peace or tranquillity of India or any part thereof;
- (b) the safeguarding of the financial stability and credit of the Federal Government;
- (c) the safeguarding of the legitimate interests of minorities;
- (d) the securing to, and to the dependants of, persons who are or have been members of the public services of any rights provided or preserved for them by or

under this Act and the safeguarding of their legitimate interests ;

- (e) the securing in the sphere of executive action of the purposes which the provisions of chapter III of Part V of this Act are designed to secure in relation to legislation ;
- (f) the prevention of action which would subject goods of United Kingdom or Burmese origin imported into India to discriminatory or penal treatment ;
- (g) the protection of the rights of any Indian State and the rights and dignity of the Ruler thereof ; and
- (h) the securing that the due discharge of his functions with respect to matters with respect to which he is by or under this Act required to act in his discretion, or to exercise his individual judgment, is not prejudiced or impeded by any course of action taken with respect to any other matter.

(2) If and in so far as any special responsibility of the Governor-General is involved, he shall in the exercise of his functions exercise his individual judgment as to the action to be taken.

NOTES.

Sub-section (1) (g).

This special responsibility only applies where there is a conflict between rights arising under the Constitution Act and those enjoyed by a State outside the Federal sphere. It may be necessary for the Governor-General to deal with such a conflict not only in his capacity as the executive head of the Federation but also in his capacity as the representative of the Crown in its relations with the States ; but his special responsibility must necessarily arise in the first capacity only, his action in the second capacity being untouched in any way by the Constitution Act.⁸

8. Para 171, page 95, J. C. Report.

Provisions
as to Instru-
ment of Ins-
tructions.

13.—(1) The Secretary of State shall lay before Parliament the draft of any Instrument of Instructions (including any Instrument amending or revoking an Instrument previously issued) which it is proposed to recommend His Majesty to issue to the Governor-General, and no further proceedings shall be taken in relation thereto except in pursuance of an address presented to His Majesty by both Houses of Parliament praying that the Instrument may be issued.

(2) The validity of anything done by the Governor-General shall not be called in question on the ground that it was done otherwise than in accordance with any Instrument of Instructions issued to him.

16.—(1) The Governor-General shall appoint a person. Advocate
General for
Federation.
being a person qualified to be appointed a judge of the Federal Court, to be Advocate-General for the Federation.

(2) It shall be the duty of the Advocate-General to give advice to the Federal Government upon such legal matters, and to perform such other duties of a legal character, as may be referred or assigned to him by the Governor-General, and in the performance of his duties he shall have right of audience in all Courts in British India and, in a case in which federal interests are concerned, in all Courts in any Federated State.

(3) The Advocate-General shall hold office during the pleasure of the Governor-General, and shall receive such remuneration as the Governor-General may determine.

(4) In exercising his powers with respect to the appointment and dismissal of the Advocate-General and with respect to the determination of his remuneration, the Governor-General shall exercise his individual judgment.

NOTES.

Advocate-General.

Sir B. L. Mitter, has been appointed the first Advocate-General for

the Federation with effect from 1st April, 1937.

Sub-section (4): resumption of powers by the Governor-General, in case the constitution breaks down. —

H. H. the Maharaja of Bikaner put this pertinent question in the Federal Structure Sub-Committee: "What happens if the Federation—God forbid—does not work. Then we must be restored to our rights, now surrendered to the Crown for an object that does not materialise." The Princes objected to the Governor-General in his discretion assuming sole authority over the States for an indefinite period. The result is that the breakdown provisions are to operate a maximum period of three years from the date of the proclamation, in the meantime it is expected that the Parliament would make necessary amendments in the Act to meet the conditions that resulted in the breakdown.

Conduct
of business
of Federal
Govern-
ment.

17.—(1) All executive action of the Federal Government shall be expressed to be taken in the name of the Governor-General.

(2) Orders and other instruments made and executed in the name of the Governor-General shall be authenticated in such manner as may be specified in rules to be made by the Governor-General, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor-General.

(3) The Governor-General shall make rules for the more convenient transaction of the business of the Federal Government, and for the allocation among ministers of the said business in so far as it is not business with respect to which the Governor-General is by or under this Act required to act in his discretion.

(4) The rules shall include provisions requiring ministers and secretaries to Government to transmit to the Governor-General all such information with respect to the business of the Federal Government as may be specified in the rules or as the Governor-

General may otherwise require to be so transmitted, and in particular requiring a minister to bring to the notice of the Governor-General, and the appropriate secretary to bring to the notice of the minister concerned and of the Governor-General, any matter under consideration by him which involves, or appears to him likely to involve, any special responsibility of the Governor-General

(5) In the discharge of his functions under sub-sections (2), (3) and (4) of this section the Governor-General shall act in his discretion after consultation with his ministers.

CHAPTER III.

THE FEDERAL LEGISLATURE.

General.

18 —(1) There shall be a Federal Legislature which shall consist of His Majesty, represented by the Governor-General, and two Chambers, to be known respectively as the Council of State and the House of Assembly (in this Act referred to as "the Federal Assembly").

Constitution of the
Federal
Legislature.

(2) The Council of State shall consist of one hundred and fifty-six representatives of British India and not more than one hundred and four representatives of the Indian States, and the Federal Assembly shall consist of two hundred and fifty representatives of British India and not more than one hundred and twenty-five representatives of the Indian States.

(3) The said representatives shall be chosen in accordance with the provisions in that behalf contained in the First Schedule to this Act.

(4) The Council of State shall be a permanent body not subject to dissolution, but as near as may be one-third of the members thereof shall retire in every third year in accordance with the provisions in that behalf contained in the said First Schedule.

(5) Every Federal Assembly, unless sooner dissolved, shall continue for five years from the date appointed for their first meeting and no longer, and the expiration of the said period of five years shall operate as a dissolution of the Assembly.

Provisions as to Members of Legislature.

Oath of
members.

24. Every member of either Chamber shall, before taking his seat, make and subscribe before the Governor-General, or some person appointed by him, an oath according to that one of the forms set out in the Fourth Schedule to this Act which the member accepts as appropriate in his case.

Vacation of
seats.

25.—(1) No person shall be a member of both Chambers, and rules made by the Governor-General exercising his individual judgment shall provide for the vacation by a person who is chosen a member of both Chambers of his seat in one Chamber or the other.

(2) If a member of either Chamber—

(a) becomes, subject to any of the disqualifications mentioned in subsection (1) of the next succeeding section; or

(b) by writing under his hand addressed to the Governor-General resigns his seat,

his seat shall thereupon become vacant.

(3) If for sixty days a member of either Chamber is without permission of the Chamber absent from all meetings thereof, the Chamber may declare his seat vacant:

Provided that in computing the said period of sixty days no account shall be taken of any period during which the Chamber is prorogued, or is adjourned for more than four consecutive days.

26.—(1) A person shall be disqualified for being chosen as, and for being, a member of either Chamber—

Disqualifi-
cations for
member-
ship.

- (a) if he holds any office of profit under the Crown in India, other than an office declared by Act of the Federal Legislature not to disqualify its holder;
- (b) if he is of unsound mind and stands so declared by a competent Court;
- (c) if he is an undischarged insolvent;
- (d) if, whether before or after the establishment of the Federation, he has been convicted, or has, in proceedings for questioning the validity or regularity of an election, been found to have been guilty, of any offence or corrupt or illegal practice relating to elections which has been declared by Order in Council or by an Act of the Federal Legislature to be an offence or practice entailing disqualification for membership of the Legislature, unless such period has elapsed as may be specified in that behalf by the provisions of that Order or Act;
- (e) if, whether before or after the establishment of the Federation, he has been convicted of any other offence by a Court in British India or in a State which is a Federated State and sentenced to transportation or to imprisonment for not less than two years, unless a period of five years, or such less period as the Governor-General, acting in his discretion, may allow in any particular case, has elapsed since his release;
- (f) if, having been nominated as a candidate for the Federal or any Provincial Legislature or having acted as an election agent of any person so nominated, he has failed to lodge a return of election expenses within the time and in the manner required by any Order in Council made under this Act or by any Act of the

Federal or the Provincial Legislature, unless five years have elapsed from the date by which the return ought to have been lodged or the Governor-General acting in his discretion, has removed the disqualification :

Provided that a disqualification under paragraph (f) of this sub-section shall not take effect until the expiration of one month from the date by which the return ought to have been lodged or of such longer period as the Governor-General, acting in his discretion, may in any particular case allow.

(2) A person shall not be capable of being chosen a member of either Chamber while he is serving a sentence of transportation or of imprisonment for a criminal offence.

(3) Where a person who, by virtue of a conviction or a conviction and a sentence, becomes disqualified by virtue of paragraph (d) or paragraph (e) of subsection (1) of this section is at the date of the disqualification a member of the Legislature, his seat shall, notwithstanding anything in this or the last preceding section, not become vacant by reason of the disqualification until three months have elapsed from the date thereof, or, if within those three months an appeal or petition for revision is brought in respect of the conviction or the sentence, until that appeal or petition is disposed of, but during any period during which his membership is preserved by this sub-section he shall not sit or vote.

(4) For the purposes of this section a person shall not be deemed to hold an office of profit under the Crown in India by reason only that—

- (a) he is a minister either for the Federation or for a Province; or
- (b) while serving a State, he remains a member of one of the services of the Crown in India and retains all or any of his rights as such.

27. If a person sits or votes as a member of either Chamber when he is not qualified or is disqualified for membership thereof, or when he is prohibited from so doing by the provisions of sub-section (3) of the last preceding section, he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the Federation:

Penalty for sitting and voting when not qualified, or when disqualified.

28.—(1) Subject to the provisions of this Act and to the rules and standing orders regulating the procedure of the Federal Legislature, there shall be freedom of speech in the Legislature, and no member of the Legislature shall be liable to any proceedings in any Court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either Chamber of the Legislature of any report, paper, votes or proceedings.

Privileges, etc.; of members

(2) In other respects, the privileges of members of the Chambers shall be such as may from time to time be defined by Act of the Federal Legislature and, until so defined, shall be such as were immediately before the establishment of the Federation enjoyed by members of the Indian Legislature.

(3) Nothing in any existing Indian Act, and, notwithstanding anything in the foregoing provisions of this section, nothing in this Act, shall be construed as conferring, or empowering the Federal Legislature to confer, on either Chamber or on both Chambers sitting together, or on any committee or officer of the Legislature, the status of a Court, or any punitive or disciplinary powers other than a power to remove or exclude persons infringing the rules or standing orders, or otherwise behaving in a disorderly manner.

(4) Provision may be made by an Act of the Federal Legislature for the punishment, on conviction before a Court, of persons who refuse to give evidence or produce documents be-

fore a committee of a Chamber when duly required by the chairman of the committee so to do :

Provided that any such Act shall have effect subject to such rules for regulating the attendance before such committees of persons who are, or have been, in the service of the Crown in India, and safeguarding confidential matter from disclosure, as may be made by the Governor-General exercising his individual judgment.

(5) The provisions of sub-sections (1) and (2) of this section shall apply in relation to persons who by virtue of this Act have the right to speak in, and otherwise take part in the proceedings of, a Chamber as they apply in relation to members of the Legislature.

29. Members of either Chamber shall be entitled to receive such salaries and allowances as may from time to time be determined by Act of the Federal Legislature and, until provision in that respect is so made, allowances at such rates and upon such conditions as were immediately before the date of the establishment of the Federation applicable in the case of members of the Legislative Assembly of the Indian Legislature.

Legislative Procedure.

30.—(1) Subject to the special provisions of this Part of this Act with respect to financial Bills, a Bill may originate in either Chamber.

(2) Subject to the provisions of the next succeeding section, a Bill shall not be deemed to have been passed by the Chambers of the Legislature unless it has been agreed to by both Chambers, either without amendment or with such amendments only as are agreed to by both Chambers.

(3) A Bill pending in the Legislature shall not lapse by reason of the prorogation of the Chambers.

(4) A Bill pending in the Council of State which has not been passed by the Federal Assembly shall not lapse on a dissolution of the Assembly.

(5) A Bill which is pending in the Federal Assembly or which having been passed by the Federal Assembly is pending in the Council of State shall, subject to the provisions of the next succeeding section, lapse on a dissolution of the Assembly.

31.—(1) If after a Bill has been passed by one Chamber and transmitted to the other Chamber —

Joint
sittings of
both Cham-
bers in cer-
tain cases.

- (a) the Bill is rejected by the other Chamber ; or
- (b) the Chambers have finally disagreed as to the amendments to be made in the Bill ; or
- (c) more than six months elapse from the date of the reception of the Bill by the other Chamber without the Bill being presented to the Governor-General for his assent,

the Governor-General may, unless the Bill has lapsed by reason of a dissolution of the Assembly, notify to the Chambers, by message if they are sitting or by public notification if they are not sitting, his intention to summon them to meet in a joint sitting for the purpose of deliberating and voting on the Bill :

Provided that, if it appears to the Governor-General that the Bill relates to finance or to any matter which affects the discharge of his functions in so far as he is by or under this Act required to act in his discretion or to exercise his individual judgment, he may so notify the Chambers notwithstanding that there has been no rejection of or final disagreement as to the Bill and notwithstanding that the said period of six months has not elapsed, if he is satisfied that there is no reasonable prospect of the Bill being presented to him for his assent without undue delay.

In reckoning any such period of six months as is referred to

in this sub-section, no account shall be taken of any time during which the Legislature is prorogued or during which both Chambers are adjourned for more than four days.

(2) Where the Governor-General has notified his intention of summoning the Chambers to meet in a joint sitting, neither Chamber shall proceed further with the Bill, but the Governor-General may at any time in the next session after the expiration of six months from the date of his notification summon the Chambers to meet in a joint sitting for the purpose specified in his notification and, if he does so, the Chambers shall meet accordingly :

Provided that, if it appears to the Governor-General that the Bill is such a Bill as is mentioned in the proviso to sub-section (1) of this section, he may summon the Chambers to meet in a joint sitting for the purpose aforesaid at any date, whether in the same session or in the next session.

(3) The functions of the Governor-General under the provisos to the two last preceding sub-sections shall be exercised by him in his discretion.

(4) If at the joint sitting of the two Chambers the Bill, with such amendments, if any, as are agreed to in joint sitting, is passed by a majority of the total number of members of both Chambers present and voting, it shall be deemed for the purposes of this Act to have been passed by both Chambers :

Provided that at a joint sitting—

- (a) if the Bill, having been passed by one Chamber, has not been passed by the other Chamber with amendments and returned to the Chamber in which it originated, no amendment shall be proposed to the Bill other than such amendments (if any) as are made necessary by the delay in the passage of the Bill ;

- (b) if the Bill has been so passed and returned, only such amendments as aforesaid shall be proposed to the Bill and such other amendments as are relevant to the matters with respect to which the Chambers have not agreed,

and the decision of the person presiding as to the amendments which are admissible under this sub-section shall be final.

(5) A joint sitting may be held under this section and a Bill passed thereat notwithstanding that a dissolution of the Assembly has intervened since the Governor-General notified his intention to summon the Chambers to meet therein.

32.—(1) When a Bill has been passed by the Chambers, it shall be presented to the Governor-General, and the Governor-General shall in his discretion declare either that he assents in His Majesty's name to the Bill, or that he withholds assent therefrom, or that he reserves the Bill for the signification of His Majesty's pleasure;

Assent to
Bills and
power of
Crown to
disallow
Acts.

Provided that the Governor-General may in his discretion return the Bill to the Chambers with a message requesting that they will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message, and the Chambers shall reconsider the Bill accordingly.

(2) A Bill reserved for the signification of His Majesty's pleasure shall not become an Act of the Federal Legislature unless and until, within twelve months from the day on which it was presented to the Governor-General, the Governor-General makes known by public notification that His Majesty has assented thereto.

(3) Any Act assented to by the Governor-General may be disallowed by His Majesty within twelve months from the day of

the Governor-General's assent, and where any Act is so disallowed the Governor-General shall forthwith make the disallowance known by public notification, and as from the date of the notification the Act shall become void.

Procedure in Financial matters.

Annual
financial
statement.

33.—(1) The Governor-General shall in respect of every financial year cause to be laid before both Chambers of the Federal Legislature a statement of the estimated receipts and expenditure of the Federation for that year, in this Part of this Act referred to as the "annual financial statement."

(2) The estimates of expenditure embodied in the annual financial statement shall show separately—

(a) the sums required to meet expenditure described by this Act as expenditure charged upon the revenues of the Federation; and

(b) the sums required to meet other expenditure proposed to be made from the revenues of the Federation

and shall distinguish expenditure on revenue account from other expenditure, and indicate the sums, if any, which are included solely because the Governor-General has directed their inclusion as being necessary for the due discharge of any of his special responsibilities.

(3) The follownig expenditure shall be expenditure charged on the revenues of the Federation :—

(a) the salary and allowances of the Governor-General and other expenditure relating to his office for which provision is required to be made by Order in Council;

(b) debt charges for which the Federation is liable, including interest, sinking fund charges and redemption charges, and other expenditure relating to the

raising of loans and the service and redemption of debt :

- (c) the salaries and allowances of ministers, of counsellors, of the financial adviser, of the Advocate-General, of chief commissioners, and of the staff of the financial adviser ;
- (d) the salaries, allowances, and pensions payable to or in respect of judges of the Federal Court, and the pensions payable to or in respect of judges of any High Court ;
- (e) expenditure for the purpose of the discharge by the Governor-General of his functions with respect to defence and ecclesiastical affairs, his functions with respect to external affairs in so far as he is by or under this Act required in the exercise thereof to act in his discretion, his functions in or in relation to tribal areas, and his functions in relation to the administration of any territory in the direction and control of which he is under this Act required to act in his discretion : provided that the sum so charged in any year in respect of expenditure on ecclesiastical affairs shall not exceed forty-two lakhs of rupees, exclusive of pension charges ;
- (f) the sums payable to His Majesty under this Act out of the revenues of the Federation in respect of the expenses incurred in discharging the functions of the Crown in its relations with Indian States ;
- (g) any grants for purposes connected with the administration of any areas in a Province which are for the time being excluded areas ;

- (h) any sums required to satisfy any judgment, decree or award of any Court or arbitral tribunal;
- (i) any other expenditure declared by this Act or any Act of the Federal Legislature to be so charged.

(4) Any question whether any proposed expenditure falls within a class of expenditure charged on the revenues of the Federation shall be decided by the Governor-General in his discretion.

Procedure
in Legisla-
ture with
respect to
estimates.

34.—(1) So much of the estimates of expenditure as relates to expenditure charged upon the revenues of the Federation shall not be submitted to the vote of the Legislature, but nothing in this sub-section shall be construed as preventing the discussion in either Chamber of the Legislature of any of those estimates other than estimates relating to expenditure referred to in paragraph (d) or paragraph (f) of sub-section (3) of the last preceding section.

(2) So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the Federal Assembly and thereafter to the Council of State, and either Chamber shall have power to assent or to refuse to assent to any demand, or to assent to any demand subject to a reduction of the amount specified therein :

Provided that, where the Assembly have refused to assent to any demand, that demand shall not be submitted to the Council of State, unless the Governor-General so directs and, where the Assembly have assented to a demand subject to a reduction of the amount specified therein, a demand for the reduced amount only shall be submitted to the Council of State, unless the Governor-General otherwise directs; and where, in either of the said cases, such a direction is given, the demand submitted to the Council of State shall be for such amount, not being a greater amount than that originally demanded, as may be specified in the direction.

(3) If the Chambers differ with respect to any demand the Governor-General shall summon the two Chambers to meet in a joint sitting for the purpose of deliberating and voting on the demand as to which they disagree, and the decision of the majority of the members of both Chambers present and voting shall be deemed to be the decision of the two Chambers.

(4) No demand for a grant shall be made except on the recommendation of the Governor-General.

35.—(1) The Governor-General shall authenticate by his signature a schedule specifying—

Authenti-
cation of
schedule of
authorised
expendi-
ture.

(a) the grants made by the Chambers under the last preceding section;

(b) the several sums required to meet the expenditure charged on the revenues of the Federation but not exceeding, in the case of any sum, the sum shown in the statement previously laid before the Legislature :

Provided that, if the Chambers have not assented to any demand for a grant or have assented subject to a reduction of the amount specified therein, the Governor-General may, if in his opinion the refusal of reduction would affect the due discharge of any of his special responsibilities, include in the schedule such additional amount, if any, not exceeding the amount of the rejected demand or the reduction, as the case may be, as appears to him necessary in order to enable him to discharge that responsibility.

(2) The schedule so authenticated shall be laid before both Chambers but shall not be open to discussion or vote therein.

(3) Subject to the provisions of the next succeeding section, no expenditure from the revenues of the Federation shall be deemed to be duly authorised unless it is specified in the schedule so authenticated.

Part
III (B)
Ss. 36—37

Supplemen-
tary state-
ments of
expendi-
ture.

36. If in respect of any financial year further expenditure from the revenues of the Federation becomes necessary over and above the expenditure theretofore authorised for that year, the Governor-General shall cause to be laid before both Chambers of the Federal Legislature a supplementary statement showing the estimated amount of that expenditure, and the provisions of the preceding sections shall have effect in relation to that statement and that expenditure as they have effect in relation to the annual financial statement and the expenditure mentioned therein.

Special
provisions
as to
financial
Bills

37.—(1) A Bill or amendment making provision—

- (a) for imposing or increasing any tax; or
- (b) for regulating the borrowing of money or the giving of any guarantee by the Federal Government, or for amending the law with respect to any financial obligations undertaken or to be undertaken by the Federal Government, or
- (c) for declaring any expenditure to be expenditure charged on the revenues of the Federation, or for increasing the amount of any such expenditure,

shall not be introduced or moved except on the recommendation of the Governor-General, and a Bill making such provision shall not be introduced in the Council of State.

(2) A Bill or amendment shall not be deemed to make provision for any of the purposes aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment or fees for licences or fees for services rendered.

(3) A Bill which, if enacted and brought into operation, would involve expenditure from the revenues of the Federation shall not be passed by either Chamber unless the Governor-General has recommended to that Chamber the consideration of the Bill.

*Procedure generally.*Rules of
procedure

38.—(1) Each Chamber of the Federal Legislature may make rules for regulating, subject to the provisions of this Act, their procedure and the conduct of their business :

Provided that as regards each Chamber the Governor-General shall in his discretion, after consultation with the President or the Speaker, as the case may be, make rules—

- (a) for regulating the procedure of, and the conduct of business in, the Chamber in relation to any matter which affects the discharge of his functions in so far as he is by or under this Act required to act in his discretion or to exercise his individual judgment;
- (b) for securing the timely completion of financial business,
- (c) for prohibiting the discussion of, or the asking of questions on, any matter connected with any Indian State, other than a matter with respect to which the Federal Legislature has power to make laws for that State, unless the Governor-General in his discretion is satisfied that the matter affects Federal interests or affects a British subject, and has given his consent to the matter being discussed or the question being asked;
- (d) for prohibiting, save with the consent of the Governor-General in his discretion,—
 - (i) the discussion of, or the asking of questions on, any matter connected with relations between His Majesty or the Governor-General and any foreign State or Prince; or
 - (ii) the discussion, except in relation to estimates of expenditure, of, or the asking of questions on,

any matter connected with the tribal areas or the administration of any excluded area; or

- (iii) the discussion of, or the asking of questions on, any action taken in his discretion by the Governor-General in relation to the affairs of a Province; or
- (iv) the discussion of, or the asking of questions on, the personal conduct of the Ruler of any Indian State, or of a member of the ruling family thereof;

and, if and in so far as any rule so made by the Governor-General is inconsistent with any rule made by a Chamber, the rule made by the Governor-General shall prevail.

(2) The Governor-General, after consultation with the President of the Council of State and the Speaker of the Legislative Assembly, may make rules as to the procedure with respect to joint sittings of, and communications between, the two Chambers.

The said rules shall make such provision for the purposes specified in the proviso to the preceding subsection as the Governor-General in his discretion may think fit.

(3) Until rules are made under this section, the rules of procedure and standing orders in force immediately before the establishment of the Federation with respect to the Indian Legislature shall have effect in relation to the Federal Legislature subject to such modifications and adaptations as may be made therein by the Governor-General in his discretion.

(4) At a joint sitting of the two Chambers the President of the Council of State, or in his absence such person as may be determined by rules of procedure made under this section, shall preside.

39. All proceedings in the Federal Legislature shall be conducted in the English language :

English to
be used in
the Federal
Legislature.

Provided that the rules of procedure of each Chamber and the rules with respect to joint sittings shall provide for enabling persons unacquainted, or not sufficiently acquainted, with the English language to use another language.

40.—(1) No discussion shall take place in the Federal Legislature with respect to the conduct of any judge of the Federal Court or a High Court in the discharge of his duties.

Restrictions
on dis-
cussion in
the Legisla-
ture.

In this subsection the reference to a High Court shall be construed as including a reference to any court in a Federal State which is a High Court for any of the purposes of Part IX of this Act.

(2) If the Governor-General in his discretion certifies that the discussion of a Bill introduced or proposed to be introduced in the Federal Legislature, or of any specified clause of a Bill, or of any amendment moved or proposed to be moved to a Bill, would affect the discharge of his special responsibility for the prevention of any grave menace to the peace or tranquility of India or any part thereof, he may in his discretion direct that no proceedings or no further proceedings, shall be taken in relation to the Bill, clause or amendment, and effect shall be given to the direction.

41.—(1) The validity of any proceedings in the Federal Legislature shall not be called in question on the ground of any alleged irregularity of procedure.

Courts not
to inquire
into pro-
ceedings
of the Legis-
lature.

(2) No officer or other member of the Legislature in whom powers are vested by or under this Act for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

CHAPTER IV.

LEGISLATIVE POWERS OF GOVERNOR-GENERAL.

Power of
Governor-
General to
promulgate
ordinances
during
recess of
Legislature.

42.—(1) If at any time when the Federal Legislature is not in session the Governor-General is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require :

Provided that the Governor-General—

- (a) shall exercise his individual judgment as respects the promulgation of any ordinance under this section if a Bill containing the same provisions would under this Act have required his previous sanction to the introduction thereof into the Legislature; and
- (b) shall not, without instructions from His Majesty, promulgate any such ordinance if he would have deemed it necessary to reserve a Bill containing the same provisions for the signification of His Majesty's pleasure thereon.

(2) An ordinance promulgated under this section shall have the same force and effect as an Act of the Federal Legislature assented to by the Governor-General, but every such ordinance—

- (a) shall be laid before the Federal Legislature and shall cease to operate at the expiration of six weeks from the reassembly of the Legislature, or, if before the expiration of that period resolutions disapproving it are passed by both Chambers, upon the passing of the second of those resolutions;
- (b) shall be subject to the provisions of this Act relating to the power of His Majesty to disallow Acts as if it

were an Act of the Federal Legislature assented to by the Governor-General; and

(c) may be withdrawn at any time by the Governor-General.

(3) If and so far as an ordinance under this section makes any provision which the Federal Legislature would not under this Act be competent to enact, it shall be void.

43.—(1) If at any time the Governor-General is satisfied that circumstances exist which render it necessary for him to take immediate action for the purpose of enabling him satisfactorily to discharge his functions in so far as he is by or under this Act required in the exercise thereof to act in his discretion or to exercise his individual judgment, he may promulgate such ordinances as in his opinion the circumstances of the case require.

Power of Governor-General to promulgate ordinances at any time with respect to certain subjects.

(2) An ordinance promulgated under this section shall continue in operation for such period not exceeding six months as may be specified therein, but may by a subsequent ordinance be extended for a further period not exceeding six months.

(3) An ordinance promulgated under this section shall have the same force and effect as an Act of the Federal Legislature assented to by the Governor-General, but every such ordinance—

(a) shall be subject to the provisions of this Act relating to the power of His Majesty to disallow Acts as if it were an Act of the Federal Legislature assented to by the Governor-General;

(b) may be withdrawn at any time by the Governor-General; and

(c) if it is an ordinance extending a previous ordinance for a further period, shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament.

Power of
Governor-
General in
certain cir-
cumstances
to enact
Acts.

(4) If and so far as an ordinance under this section makes any provision which the Federal Legislature would not under this Act be competent to enact, it shall be void.

(5) The functions of the Governor-General under this section shall be exercised by him in his discretion.

44.—(1) If at any time it appears to the Governor-General that, for the purpose of enabling him satisfactorily to discharge his functions in so far as he is by or under this Act required in the exercise thereof to act in his discretion or to exercise his individual judgment, it is essential that provision should be made by legislation, he may by message to both Chambers of the Legislature explain the circumstances which in his opinion render legislation essential, and either—

(a) enact forthwith, as a Governor-General's Act, a Bill containing such provisions as he considers necessary; or

(b) attach to his message a draft of the Bill which he considers necessary.

(2) Where the Governor-General takes such action as is mentioned in paragraph (b) of the preceding subsection, he may at any time after the expiration of one month enact, as a Governor-General's Act, the Bill proposed by him to the Chambers either in the form of the draft communicated to them or with such amendments as he deems necessary, but before so doing he shall consider any address which may have been presented to him within the said period by either Chamber with reference to the Bill or to amendments suggested to be made therein.

(3) A Governor-General's Act shall have the same force and effect, and shall be subject to disallowance in the same manner, as an Act of the Federal Legislature assented to by the Governor-General and, if and in so far as a Governor-General's

Act makes any provision which the Federal Legislature would not under this Act be competent to enact, it shall be void.

(4) Every Governor-General's Act shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament.

(5) The functions of the Governor-General under this section shall be exercised by him in his discretion.

CHAPTER V.

PROVISIONS IN CASE OF FAILURE OF CONSTITUTIONAL MACHINERY.

45.—(1) If at any time the Governor-General is satisfied that a situation has arisen in which the government of the Federation cannot be carried on in accordance with the provisions of this Act, he may by Proclamation—

Power of
Governor-
General to
issue Pro-
clamations

(a) declare that his functions shall to such extent as may be specified in the Proclamation be exercised by him in his discretion;

(b) assume to himself all or any of the powers vested in or exercisable by any Federal body or authority,

and any such Proclamation may contain such incidental and consequential provisions as may appear to him to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Act relating to any Federal body or authority;

Provided that nothing in this sub-section shall authorise the Governor-General to assume to himself any of the powers vested in or exercisable by the Federal Court or to suspend, either in whole or in part, the operation of any provision of this Act relating to the Federal Court.

(2) Any such Proclamation may be revoked or varied by a subsequent Proclamation.

- (3) A Proclamation issued under this section—
- (a) shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament;
 - (b) unless it is a Proclamation revoking a previous Proclamation, shall cease to operate at the expiration of six months :

Provided that, if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament, the Proclamation shall, unless revoked, continue in force for a further period of twelve months from the date on which under this sub-section it would otherwise have ceased to operate.

(4) If at any time the government of the Federation has for a continuous period of three years been carried on under and by virtue of a Proclamation issued under this section, then, at the expiration of that period, the Proclamation shall cease to have effect and the government of the Federation shall be carried on in accordance with the other provisions of this Act, subject to any amendment thereof which Parliament may deem it necessary to make, but nothing in this sub-section shall be construed as extending the power of Parliament to make amendments in this Act without affecting the accession of a State.

(5) If the Governor-General, by a Proclamation under this section, assumes to himself any power of the Federal Legislature to make laws, any law made by him in the exercise of that power shall, subject to the terms thereof, continue to have effect until two years have elapsed from the date on which the Proclamation ceases to have effect, unless sooner repealed or re-enacted by Act of the appropriate Legislature, and any reference in this Act to Federal Acts, Federal laws, or Acts or Laws of the Federal Legislature shall be construed as including a reference to such a law.

(6) The functions of the Governor-General under this section shall be exercised by him in his discretion.

PART III.

THE GOVERNORS' PROVINCES.

CHAPTER I.

THE PROVINCES.

46.—(1) Subject to the provisions of the next succeeding Governor's Provinces. section with respect to Berar, the following shall be Governors' Provinces, that is to say, Madras, Bombay, Bengal, the United Provinces, the Punjab, Bihar, the Central Provinces and Berar, Assam, the North-West Frontier Province, Orissa, Sind, and such other Governors' Provinces as may be created under this Act.

(2) Burma shall cease to be part of India.

(3) In this Act the expression "Province" means, unless the context otherwise requires, a Governor's Province, and "Provincial" shall be construed accordingly.

47. Whereas certain territory (in this Act referred to as "Berar") is under the sovereignty of His Exalted Highness the Nizam of Hyderabad, but is at the date of the passing of this Act, by virtue of certain agreements subsisting between His Majesty and His Exalted Highness, administered together with the Central Provinces : Provisions as to Berar.

And whereas it is in contemplation that an agreement shall be concluded between His Majesty and His Exalted Highness whereby, notwithstanding the continuance of the sovereignty of His Exalted Highness over Berar, the Central Provinces and Berar may be governed together as one Governor's Province under this Act by the name of the Central Provinces and Berar :

Now, therefore,—

- (1) While any such agreement is in force—
 - (a) Berar and the Central Provinces shall, notwithstanding the continuance of the sovereignty of His Exalted Highness, be deemed to be one Governor's Province by the name of the Central Provinces and Berar;
 - (b) any reference in this Act or in any other Act to British India shall be construed as a reference to British India and Berar, and any reference in this Act to subjects of His Majesty shall, except for the purposes of any oath of allegiance, be deemed to include a reference to Berar subjects of His Exalted Highness;
 - (c) any provision made under this Act with respect to the qualifications of the voters for the Provincial Legislature of the Central Provinces and Berar, or the voters for the Council of State, shall be such as to give effect to any provisions with respect to those matters contained in the agreement:
- (2) If no such agreement is concluded, or if such an agreement is concluded but subsequently ceases to have effect, references in this Act to the Central Provinces and Berar shall be construed as references to the Central Provinces, and His Majesty in Council may make such consequential modifications in the provisions of this Act relating to the Central Provinces as he thinks proper.

NOTES.

Terms of New Treaty with Nizam of Hyderabad and Berar.

His Excellency the Viceroy and Governor-General is pleased to announce that His Imperial Majesty The King-Emperor of India, has been graciously pleased to command that His Exalted Highness the Nizam of Hyderabad and his successors shall henceforward hold the dynastic title of His Exalted Highness the Nizam of Hyderabad and

Berar, in recognition of the sovereignty of His Exalted Highness in the territory of Berar.

His Excellency the Viceroy and Governor-General is pleased to announce that His Imperial Majesty the King-Emperor of India, has been graciously pleased to grant the title of "His Highness the Prince of Berar" to be held by the Heir Apparent of His Exalted Highness the Nizam of Hyderabad and Berar and of his successors.

The subjoined agreement concluded between His Imperial Majesty The King-Emperor of India, and His Exalted Highness the Nizam of Hyderabad on October, 24, 1936, and the letter from His Excellency the Viceroy and Governor-General to His Exalted Highness the Nizam of Hyderabad, dated October 26, 1936, are published for general information.

Agreement made this twenty-fourth day of October Nineteen Hundred and Thirty-six between His Majesty The King-Emperor of India and Lieutenant-General His Exalted Highness Asaf Jah Muzaffarul-Mulk wal Mamalik, Nizam-ul-Mulk Nizam ud Daula, Nawab Sir Mir Usman Ali Khan, Bahadur, Fateh Jang, Faithful Ally of the British Government, G.C.S.I., G.B.E., Nizam of Hyderabad (Deccan).

Whereas the Dominions under the sovereignty of His Exalted Highness the Nizam of Hyderabad include certain territories known as Berar.

Sovereignty of Berar.

And whereas by an Agreement, dated November 5, 1902, it was provided that the territories of His Exalted Highness known as Berar, the sovereignty over which of His Exalted Highness was therein reaffirmed, should be administered by the British Government in such manner as they might deem desirable;

And whereas proposals for the establishment of an Indian Federation, comprising such Indian States as may accede thereto and the Provinces of British India constituted as autonomous Provinces, have been discussed between representatives of His Majesty's Government, of the Parliament of the United Kingdom, of British India and of the Rulers of the Indian States;

And whereas a Constitution for a Federation of India has been approved by Parliament and embodied in the Government of India Act, 1935, but provision is made whereby different parts of the Act may be brought into force on different dates;

LAW OF PROTECTION OF INDIAN STATES

And whereas none of the provisions of the said Act will apply to any of the territories of His Exalted Highness save with his consent and concurrence;

And whereas provision is made by the Government of India Act, 1935, that, in the event of the conclusion of an Agreement for that purpose between His Majesty and His Exalted Highness, the Central Provinces and Berar shall, while such Agreement is in force, be governed together as one Governor's Province under that Act;

And whereas His Exalted Highness is desirous that his territories known as Berar should be administered in accordance with the provisions of the said Act together with the territories of His Majesty known as the Central Provinces and together with those territories should form a unit of the Federation to be established under the Act, and it has appeared expedient that for that purpose a new Agreement should be made in substitution for the said Agreement of November 5, 1902;

The agreement.

Now, therefore, it is hereby agreed as follows:—

Article 1.—His Majesty hereby recognizes and reaffirms the sovereignty of His Exalted Highness over Berar.

Article 2.—His Exalted Highness on behalf of himself, his heirs and successors, hereby declares that subject to and in accordance with the provisions of the present Agreement he accedes to the Federation of India as established under the Government of India Act, 1935, in respect of his territories known, and hereinafter referred to, as Berar and His Majesty hereby signifies His acceptance of such accession.

Article 3.—His Exalted Highness on behalf of himself, his heirs and successors, hereby declares his acceptance of the provisions of the said Act, as applicable to Berar with the intent that, subject to and in accordance with the provisions of the present Agreement and notwithstanding the continuance of the sovereignty of His Exalted Highness over Berar, Berar and the territories of His Majesty known as the Central Provinces shall be administered together as if they were one province to be known by the name of the Central Provinces and Berar and His Majesty and all Federal, Central and Provincial authorities shall exercise in relation to the Central Provinces and Berar all such functions as may be vested in them by or under the said Act.

Article 4.—The Governor of the Central Provinces and Berar will be

appointed by His Majesty after consultation with His Exalted Highness and the functions exercisable under the said Act by the Governor on behalf of or as representative of His Majesty will, in relation to Berar, be exercised by virtue of the assent of His Exalted Highness the Nizam to this Agreement.

Article 5.—The flag of His Exalted Highness shall be flown alongside the British flag wherever and whenever the latter is flown in Berar under the authority of the Governor of the Central Provinces and Berar.

Article 6.—The right of His Exalted Highness to confer Hyderabad titles of honour upon the inhabitants of Berar, subject to the prior concurrence of His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States, is hereby recognized.

Article 7.—His Majesty recognizes the right of His Exalted Highness to hold Durbars in Berar subject to the concurrence in each case of His Majesty's said Representative.

Article 8.—His Exalted Highness shall with the concurrence of His Majesty's said Representative be at liberty to invite the Governor of the Central Provinces and Berar to pay ceremonial visits to Hyderabad on suitable occasions.

Article 9.—His Majesty will not raise any objection to the Khutba being read in any Mosque in Berar in the name of His Exalted Highness.

Article 10.—Notwithstanding the cesser of the said Agreement of November 5, 1902, His Majesty will continue to pay to His Exalted Highness the sum of twenty-five lakhs of rupees per annum heretofore paid in respect of Berar.

Article 11.—His Exalted Highness shall have the right to maintain an agent at the seat of Government of the Central Provinces and Berar for the purpose of representing the views of his Government with reference to any matter which is of common interest to the Central Provinces and Berar and to Hyderabad or which directly affects the interests of Hyderabad, but save as aforesaid the said agent shall have no concern with any of the internal affairs of the Central Provinces and Berar.

Article 12.—The Governor of the Central Provinces and Berar will in the administration of Berar have due regard in discharging his special responsibility for the protection of the rights of any Indian State to the commercial and economic interest of the State of Hyderabad.

LAW OF PROTECTION OF INDIAN STATES

Article 13.—The Governor-General in declaring his assent in His Majesty's name to any Bill of the Legislature of the Central Provinces and Berar applying to Berar which has been reserved for his consideration shall state that his assent to the Bill in its application to Berar has been given by virtue of the assent of His Exalted Highness the Nizam to this Agreement.

Article. 14.—The Governor of the Central Provinces and Berar in declaring his assent in His Majesty's name to any Bill of the Legislature of the Central Provinces and Berar applying to Berar or in notifying His Majesty's assent to any such Bill reserved for the signification of His Majesty's pleasure shall state that the assent to the Bill in its application to Berar has been given by virtue of the assent of His Exalted Highness the Nizam to this Agreement.

Article 15.—Nothing in the present Agreement in any way affects or diminishes the military guarantees enjoyed by His Exalted Highness under any existing treaty or agreement, and nothing in the present Agreement, shall be construed as imposing any obligation on His Exalted Highness not existing at the date hereof for the maintenance of the force known as the Hyderabad Contingent or its modern equivalent.

Article. 16.—The following provisions shall have effect in relation to the Legislature of the Central Provinces and Berar, and, on the establishment of the Federation, in relation to elections to the Council of State:—

- (a) in so far as the qualification of a voter depends on the passing of an examination, the passing of an equivalent examination in Hyderabad shall, in relation to constituencies in Berar, have the same effect as the passing of the examination which for the time being qualifies voters in the Central Provinces and Berar generally;
- (b) in so far as the qualification of a voter depends on his or another's membership of any regular forces or any police, membership of the regular forces of His Exalted Highness and membership of the Hyderabad State Police shall, in relation to constituencies in Berar, be treated in the same way as membership of His Majesty's regular military forces and membership of a British Indian Police force, respectively.

Article 17.—References in this Agreement to the Government of India Act, 1935, shall be construed as references to that Act as amended by or under any subsequent enactment, but if any amendment is so made which is inconsistent with any of the provisions of this Agreement or

amends any of the provisions of the Act specified in the Schedule to this Agreement not being an amendment which His Exalted Highness has agreed to accept as applicable to Berar or an amendment which applies only as respects territories other than Berar, His Exalted Highness may on giving notice in that behalf at any time within six months after the making of the amendment, determine this Agreement.

Article 18.—This Agreement shall have effect in substitution for the Agreement of November 5, 1902, shall not be varied or amended save with the consent of both parties or, subject to the provisions of the last preceding Article, determined by either party so long as the rights secured to him are faithfully observed by the other, and shall come into force on the date appointed as the commencement of Part III of the Government of India Act, 1935, but nevertheless such steps may be taken before that date in Berar for the purpose of bringing the said Act into operation in and in relation to the Central Provinces and Berar as may be authorized by, or by any Order in Council under, that Act.

Article 19.—The provisions of Section 6 of the Government of India Act, 1935, shall not apply to this Agreement, nor shall the jurisdiction of the Federal Court extend to any dispute arising thereunder.

Article 20.—Nothing in this Agreement affects the rights of His Exalted Highness with respect to his territories other than this Agreement has effect whether or not His Exalted Highness is pleased to execute, and His Majesty is pleased to accept, any such Instrument of Accession to the Federation of India as is contemplated by the provisions of Part II of the Government of India Act, 1935.

In confirmation whereof His Excellency the Most Honourable the Marquess of Linlithgow, P.C., K.T., G.M.S.I., G.M.I.E., O.B.E., D.L.: T.D., His Majesty's Viceroy and Governor-General of India, has appended his signature on behalf of His Majesty AND Lieutenant-General His Exalted Highness Asaf Jah Muzaffar-ul-Mulk wal Mamalik, Nizam-ul-Mulk Nizam-ud-Daula, Nawab Sir Mir Usman Ali Khan, Bahadur, Fateh Jang, Faithful Ally of the British Government, G.C.S.I., G.B.E., Nizam of Hyderabad (Deccan), has appended his signature.

Schedule.

(References in this Schedule to the Province and the Governor are references to the Central Provinces and Berar and the Governor thereof.)

So much of Part I of the Act as relates to His Majesty, the Governor-General and His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States.

The following provisions of Parts II and III:—

Subsections (1) and (2) of section seven.

Subsection (3) of section nine.

Subsection (2) of section twelve.

Subsection (1) of section fourteen.

Sections thirty-two, forty-three, forty-four and forty-nine.

Subsection (3) of section fifty.

Subsection (3) of section fifty-two.

Sections fifty four, seventy-five, seventy-six, seventy-seven, eighty-nine and ninety,

(being general provisions as to the exercise of the executive authority of the Federation in the Province, action by the Governor-General or Governor in his discretion or exercising his individual judgment, control of the Governor-General by the Secretary of State and of the Governor by the Governor-General, ordinances made by the Governor-General or Governor in his discretion, and Governor-General's and Governor's Acts).

Subsection (1) of section eleven, so far as it requires the Governor-General to act in his discretion with respect to defence.

Sections twelve and fifty-two, so far as they impose on the Governor-General the special responsibilities mentioned in paragraphs (a) and (g) of subsection (1) of section twelve, and on the Governor the special responsibilities mentioned in paragraphs (a), (f) and (g) of subsection (1) of section fifty-two, and the special responsibility as to Berar mentioned in subsection (2) thereof.

So much of the proviso to subsection (1) of section thirty-eight and the proviso to subsection (1) of section eighty-four as requires the Governor-General or Governor in his discretion to make rules:—

- (a) regulating the procedure of, and the conduct of business in the Federal or Provincial Legislature in relation to the discharge of the special responsibilities aforesaid; and
- (b) prohibiting to the extent mentioned in the proviso the discussion of, or the asking of questions on, matters connected with Indian States or the personal conduct of the Ruler of any Indian State or of a member of the ruling family thereof,

and so much of the proviso to the said subsection (1) of section thirty-eight as requires the Governor-General in his discretion to make rules

regulating the procedure of, and conduct of business in, the Federal Legislature in relation to defence, and prohibiting to the extent mentioned in that proviso the discussion of, or asking of questions on, any action taken in his discretion by him in relation to the affairs of the Province.

Subsection (2) of section forty and subsection (2) of section eighty-six [which enable the Governor-General or Governor to restrict discussion in the Federal or Provincial Legislature which would affect the discharge of the special responsibilities mentioned in paragraph (a) of subsection (1) of section twelve and paragraph (a) of subsection (1) of section fifty-two].

Section forty-seven (which relates to Berar).

Section one hundred and eight, so far as it requires the previous sanction of the Governor-General in his discretion or the Governor in his discretion to the introduction or moving of Bills or amendments which repeal, amend or are repugnant to Governor-General's or Governor's Acts or ordinances promulgated in his discretion by the Governor-General or Governor, or which affect matters relating to defence.

Section one hundred and ten, except so far as it relates to the making of laws affecting the law of British nationality, the Army Act, the Air Force Act, the Naval Discipline Act, the law of Prize or Prize Courts, or appeals to the Privy Council by special leave.

Chapter I of Part IX (which relates to the Federal Court), except section two hundred and six thereof.

Sections twenty-four and sixty-seven, subsection (4) of section two hundred and twenty, subsection (7) of section three hundred and eleven and the Fourth Schedule so far as they relate to oaths or affirmations to be taken or made by persons who are not British Subjects.

MIR USMAN ALI KHAN.

In my presence

D. G. MACKENZIE,

Resident at Hyderabad,

October 24, 1936.

LINLITHGOW.

LAW OF PROTECTION OF INDIAN STATES

Position elucidated.

To Lieut-General His Exalted Highness Asaf Jah Muzaffar-ul-Mulk wal Mamalik, Nizam-ul-Mulk Nizam ud-Daula, Nawab Sir Mir Usman Ali Khan, Bahadur, Fateh Jang, Faithful Ally of the British Government, G.C.S.I., G.B.E., Nizam of Hyderabad (Deccan).

My honoured and valued friend,

I have it in command from His Majesty the King, Emperor of India, to address Your Exalted Highness in connexion with the new Agreement dated the twenty-fourth October 1936, regarding the future administration of Berar, with a view to elucidating the position, and so preventing the occurrence of any future misunderstanding.

His Majesty has been unwilling to insert in the Agreement anything which might appear to contemplate the probability of its determination, or, as a necessary consequence, to include provisions for the future regulation in that event of Berar. Nevertheless, in order that there may be no room for doubt, His Majesty thinks it right to state that He enters into the Agreement upon the clear understanding that, if by reason of any circumstance in the future it should unfortunately come to an end His Majesty may in default of or pending a new Agreement make such arrangements for the administration of Berar, notwithstanding anything to the contrary in the Treaties of 1853 and 1860, as He may deem desirable and may exercise full and exclusive jurisdiction and authority therein. I am, however, to make it plain that this would not in any way affect the recognition of the sovereignty of Your Exalted Highness over Berar nor the payment of the sum of twenty-five lakhs of rupees per annum, nor any of the military guarantees which under existing Treaties Your Exalted Highness at present enjoys; nor would His Majesty regard Himself as entitled, without the consent of Your Exalted Highness, to make any arrangement for the administration of Berar upon a basis essentially different from that which exists at the present time.

I desire to express the high consideration which I entertain for Your Exalted Highness and to subscribe myself.

Your Exalted Highness' sincere friend,

LINLITHGOW,

Viceroy and Governor-General of India.

The Berars have an interesting history. Long ago when India was in chaos, Hyderabad bound itself by treaty to pay the cost of a force maintained for its defence by the East India Company. As generally happened under that kind of agreement, payment fell into arrears and when Lord Dalhousie was Governor-General, the Berars were assigned to the Company to settle the bill. They were administered as a separate unit for the next fifty years, but in 1902 the Nizam leased them in perpetuity to the Central Provinces. The Treaty now published continues the annual payment of Rs. 25 lakhs to His Exalted Highness and provides that the arrangements for the modern equivalent of the famous Hyderabad Contingent shall be maintained. For this satisfactory end of a long and often bitter controversy, the credit must be given to many on both sides, on the Hyderabad side especially to Sir Akbar Hydari who has proved himself a competent diplomatist.

By the agreement of October 24, 1936, between His Majesty the King-Emperor and His Exalted Highness the Nizam of Hyderabad, the future of Berar, which has been the subject of anxious controversy for over thirty years, has been amicably settled, and the sovereignty of His Exalted Highness the Nizam in the territory has been unquestionably restored. By reason of the peculiar circumstances in which Berar came to be administered as other parts of British India, the system of condominium laid down by the agreement was inevitable. It does not completely uproot the administration established in the territory in the course of eighty-three years of its connection with British India. For administrative purposes, Berar will be both an Indian State, but a State which has already acceded to Federation with the concurrence of its sovereign, His Exalted Highness the Nizam, and a province of British India. In this respect, Berar will occupy a unique position among the States in the Federation of the future. The people of Berar will have a dual political personality; they will have all the advantages which others in the Nizam's Dominions possess and all the rights and privileges of the federating units in Federal India. There will be no disturbance in the actual routine of the administration in Berar, but the functions exercised in Berar by the Governor of the Central Provinces and Berar will be exercised by the Governor "by virtue of the assent of His Exalted Highness the Nizam" to the agreement of condominium. To make the sovereignty of His Exalted Highness the Nizam complete in Berar, not only will His Exalted Highness have the right to maintain an agent at the seat of Government of the Central Provinces and Berar, but His Exalted Highness will also be consulted in the appointment of the

Governor of the Central Provinces and Berar. This settlement of a question which has been the source of great concern both to the Government of India and His Exalted Highness the Nizam is particularly satisfactory in view of the approaching constitutional changes.

PROTECTION OF THE RIGHTS OF INDIAN STATES
AND THE RIGHTS AND DIGNITY OF THE
RULERS THEREOF.

Special
responsibi-
lities of
Governor,

52.—(1) In the exercise of his functions the Governor shall have the following special responsibilities, that is to say:—

- (a) the prevention of any grave menace to the peace or tranquility of the Province or any part thereof;
- (b) the safeguarding of the legitimate interests of minorities;
- (c) the securing to, and to the dependants of, persons who are or have been members of the public services of any rights provided or preserved for them by or under this Act, and the safeguarding of their legitimate interests;
- (d) the securing in the sphere of executive action of the purposes which the provisions of chapter III of Part V of this Act are designed to secure in relation to legislation;
- (e) the securing of the peace and good government of areas which by or under the provisions of this Part of this Act are declared to be partially excluded areas;
- (f) the protection of the rights of any Indian State and the rights and dignity of the Ruler thereof; and
- (g) the securing of the execution of orders or directions lawfully issued to him under Part VI of this Act by the Governor-General in his discretion.

(2) The Governor of the Central Provinces and Berar shall also have the special responsibility of securing that a reasonable

share of the revenues of the Province is expended in or for the benefit of Berar, the Governor of any Province which includes an excluded area shall also have the special responsibility of securing that the due discharge of his functions in respect of excluded areas is not prejudiced or impeded by any course of action taken with respect to any other matter, any Governor who is discharging any functions as agent for the Governor-General shall also have the special responsibility of securing that the due discharge of those functions is not prejudiced or impeded by any course of action taken with respect to any other matter and the Governor of Sind shall also have the special responsibility of securing the proper administration of the Lloyd Barrage and Canals Scheme.

(3) If and in so far as any special responsibility of the Governor is involved, he shall, in the exercise of his functions, exercise his individual judgment as to the action to be taken.

NOTES.

Sub-section (2).

The Joint Select Committee while discussing this subject observed as follows:—

“It has come to our notice that, under the system of joint administration of the Districts known as the Berars with the Central Provinces which has obtained for many years, and which, as we have already pointed out, will continue in another form under the new Constitution, there has been a tendency on the part of the inhabitants of the Berars, and of their representatives in the Legislature, to criticise the apportionment of expenditure between the two areas forming the joint Province as favouring unduly the Central Provinces area to the disadvantage of the Berars. We express no opinion as to the justification for such criticisms, but it is evident that, under a system of responsible government, the scope for grievances on this account may well be increased. We think, therefore, that the Governor of the joint Province should have imposed upon him a special responsibility and should thus be enabled to counteract any proposals of his Ministry which he regards as likely to give justifiable ground for complaint on this account. Without attempt-

ing to usurp the functions of the draftsman, we suggest that the purpose we have in view would be adequately expressed in defining the special responsibility in some such terms as :—

‘The expenditure in the Berars of a reasonable share of the revenues raised for the joint purposes of the Bearers and the Central Provinces.

We think, moreover, that the Governor might appropriately be directed in his Instrument of Instructions to constitute some impartial body to advise him on the principles which should be followed in the distribution of revenues, if he is not satisfied that past practice affords an adequate guide for his Ministers and himself for the discharge of the special responsibility imposed upon him in respect of them. We also think that the special position of the Berars should be recognised by requiring the Governor, through his Instrument of Instructions, to interpret his special responsibility for “the protection of the rights of any Indian State” as involving *inter alia* an obligation upon him, in the administration of the Berars, to have due regard to the commercial and economic interests of the State of Hyderabad.”

PROVINCIAL LEGISLATURES

Procedure generally.

Rules of
procedure

84.—(1) A Chamber of a Provincial Legislature may make rules for regulating, subject to the provisions of this Act, their procedure and the conduct of their business :

Provided that, as regards either a Legislative Assembly or a Legislative Council, the Governor shall in his discretion, after consultation with the Speaker or the President, as the case may be, make rules—

(a) for regulating the procedure of, and the conduct of business in, the Chamber in relation to any matter which affects the discharge of his functions in so far as he is by or under this Act required to act in his discretion or to exercise his individual judgment :

(b) for securing the timely completion of financial business ;

(c) for prohibiting the discussion of, or the asking of questions on, any matter connected with any Indian State unless the Governor in his discretion is satisfied that the matter affects the interests of the Provincial Government or of a British subject ordinarily resident in the Province, and has given his consent to the matter being discussed, or to the question being asked;

(d) for prohibiting, save with the consent of the Governor in his discretion—

(i) the discussion of or the asking of questions on any matter connected with relations between His Majesty or the Governor-General and any foreign State or Prince; or

(ii) the discussion, except in relation to estimates of expenditure, of, or the asking of questions on, any matters connected with the tribal areas or arising out of or affecting the administration of an excluded area; or

(iii) the discussion of, or the asking of questions on, the personal conduct of the Ruler of any Indian State or of a member of the ruling family thereof;

and, if and in so far as any rule so made by the Governor is inconsistent with any rule made by a Chamber, the rule made by the Governor shall prevail.

(2) In a Province having a Legislative Council the Governor, after consultation with the Speaker and the President, may make rules as to the procedure with respect to joint sittings of, and communications between, the two Chambers.

The said rules shall make such provision for the purposes specified in the proviso to the preceding subsection as the Governor in his discretion may think fit.

(3) Until rules are made under this section the rules of procedure and standing orders in force immediately before the commencement of this Part of this Act with respect to the Legislative Council of the Province shall have effect in relation to the Legislature of the Province, subject to such modifications and adaptations as may be made therein by the Governor acting in his discretion.

(4) At a joint sitting of two Chambers the President of the Legislative Council, or in his absence such person as may be determined by rules of procedure made under this section, shall preside.

English to
be used in
Provincial
Legisla-
tures.

85. All proceedings in the Legislature of a Province shall be conducted in the English language:

Provided that the rules of procedure of the Chamber or Chambers, and the rules, if any, with respect to joint sittings, shall provide for enabling persons unacquainted, or not sufficiently acquainted, with the English language to use another language.

Restrictions on
discussion
in the
Legislature.

86.—(1) No discussion shall take place in a Provincial Legislature with respect to the conduct of any judge of the Federal Court or of a High Court in the discharge of his duties.

In this subsection the reference to a High Court shall be construed as including a reference to a court in a Federated State which is a High Court for any of the purposes of Part IX of this Act.

(2) If the Governor in his discretion certifies that the discussion of a Bill introduced or proposed to be introduced in the Provincial Legislature, or of any specified clause of a Bill, or of any amendment moved or proposed to be moved to a Bill, would affect the discharge of his special responsibility for the prevention of any grave menace to the peace or tranquillity of the Province

or any part thereof, he may in his discretion direct that no proceedings, or no further proceedings, shall be taken in relation to the Bill, clause or amendment and effect shall be given to the direction.

87.—(1) The validity of any proceedings in a Provincial Legislature shall not be called in question on the ground of any alleged irregularity of procedure.

Courts not
to inquire
into pro-
ceedings of
the Legis-
lature.

(2) No officer or other member of a Provincial Legislature in whom powers are vested by or under this Act for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

PART V.

LEGISLATIVE POWERS.

CHAPTER I.

DISTRIBUTION OF POWERS.

Extent of
Federal and
Provincial
laws.

99.—(1) Subject to the provisions of this Act, the Federal Legislature may make laws for the whole or any part of British India or for any Federal State, and a Provincial Legislature may make laws for the Province or for any part thereof.

(2) Without prejudice to the generality of the powers conferred by the preceding subsection, no Federal law shall, on the ground that it would have extra territorial operation, be deemed to be invalid in so far as it applies—

- (a) to British subjects and servants of the Crown in any part of India; or
- (b) to British subjects who are domiciled in any part of India wherever they may be; or
- (c) to, or to persons, on ships or aircraft registered in British India or any Federated State wherever they may be; or
- (d) in the case of a law with respect to a matter accepted in the Instrument of Accession of a Federated State as a matter with respect to which the Federal Legislature may make laws for that State, to subjects of that State wherever they may be; or
- (e) in the case of a law for the regulation or discipline of any naval, military, or air force raised in British India, to members of, and persons attached to, employed with or following, that force, wherever they may be.

100.—(1) Notwithstanding anything in the two next succeeding subsections, the Federal Legislature has, and a Provincial Legislature has not power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule to this Act (hereinafter called the "Federal Legislative List").

Subject
matter of
Federal and
Provincial
laws.

(2) Notwithstanding anything in the next succeeding subsection, the Federal Legislature, and, subject to the preceding subsection, a Provincial Legislature also, have power to make laws with respect to any of the matters enumerated in List III in the said Schedule (hereinafter called the "Concurrent Legislative List").

(3) Subject to the two preceding subsections the Provincial Legislature has, and the Federal Legislature has not, power to make laws for a Province or any part thereof with respect to any of the matters enumerated in List II in the said Schedule (hereinafter called the "Provincial Legislative List").

(4) The Federal Legislature has power to make laws with respect to matters enumerated in the Provincial Legislative List except for a Province or any part thereof.

101. Nothing in this Act shall be construed as empowering the Federal Legislature to make laws for a Federated State otherwise than in accordance with the Instrument of Accession of that State and any limitations contained therein.

Extent of
power to
legislate for
States.

102.—(1) Notwithstanding anything in the preceding sections of this chapter, the Federal Legislature shall, if the Governor-General has in his discretion declared by Proclamation (in this Act referred to as a "Proclamation of Emergency") that a grave emergency exists whereby the security of India is threatened, whether by war or internal disturbance, have power to make laws for a Province or any part thereof with respect to any of the matters enumerated in the Provincial Legislative List :

Power of
Federal
Legislature
to legislate
if any emer-
gency is
proclaimed.

Provided that no Bill or amendment for the purposes afore-

said shall be introduced or moved without the previous sanction of the Governor-General in his discretion, and the Governor-General shall not give his sanction unless it appears to him that the provision proposed to be made is a proper provision in view of the nature of the emergency.

(2) Nothing in this section shall restrict the power of a Provincial Legislature to make any law which under this Act it has power to make, but if any provision of a Provincial law is repugnant to any provision of a Federal law which the Federal Legislature has under this section power to make, the Federal law, whether passed before or after the Provincial law, shall prevail and the Provincial law shall to the extent of the repugnancy, but so long only as the Federal law continues to have effect, be void.

(3) A Proclamation of Emergency—

- (a) may be revoked by a subsequent Proclamation;
- (b) shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament; and
- (c) shall cease to operate at the expiration of six months, unless before the expiration of that period it has been approved by Resolutions of both Houses of Parliament.

(4) A law made by the Federal Legislature which that Legislature would not but for the issue of a Proclamation of Emergency have been competent to make shall cease to have effect on the expiration of a period of six months after the Proclamation has ceased to operate, except as respects things done or omitted to be done before the expiration of the said period.

103. If it appears to the Legislatures of two or more Provinces to be desirable that any of the matters enumerated in the Provincial Legislative List should be regulated in those Provinces by Act of the Federal Legislature, and if resolutions to that effect

are passed by all the Chambers of those Provincial Legislatures, it shall be lawful for the Federal Legislature to pass an Act for regulating that matter accordingly, but any Act so passed may, as respects any Province to which it applies, be amended or repealed by an Act of the Legislature of that Province.

104.—(1) The Governor-General may by public notification empower either the Federal Legislature or a Provincial Legislature to enact a law with respect to any matter not enumerated in any of the Lists in the Seventh Schedule to this Act, including a law imposing a tax not mentioned in any such list, and the executive authority of the Federation or of the Province, as the case may be, shall extend to the administration of any law so made, unless the Governor-General otherwise directs.

Residual
powers of
legislation.

(2) In the discharge of his functions under this section the Governor-General shall act in his discretion.

105.—(1) Without prejudice to the provisions of this Act with respect to the legislative powers of the Federal Legislature, provision may be made by Act of that Legislature for applying the Naval Discipline Act to the Indian naval forces and, so long as provision for that purpose is made either by an Act of the Federal Legislature or by an existing Indian law, the Naval Discipline Act as so applied shall have effect as if references therein to His Majesty's navy and His Majesty's ships included references to His Majesty's Indian navy and the ships thereof, subject however—

Application
of Naval
Discipline
Act to
Indian
naval
forces.

- (a) in the application of the said Act to the forces and ships of the Indian navy and to the trial by court martial of officers and men belonging thereto, to such modifications and adaptations, if any, as may be, or may have been, made by the Act of the Federal or Indian Legislature to adapt the said Act to the circumstances of India, including such adaptations as may be, or

may have been, so made for the purpose of authorising or requiring anything which under the said Act is to be done by or to the Admiralty, or the Secretary of the Admiralty, to be done by or to the Governor-General, or some person authorised to act on his behalf; and

- (b) in the application of the said Act to the forces and ships of His Majesty's navy other than those of the Indian navy, to such modifications and adaptations as may be made, or may have been made under section sixty-six of the Government of India Act, by His Majesty in Council for the purpose of regulating the relations of those forces and ships to the forces and the ships of the Indian navy.

(2) Notwithstanding anything in this Act or in any Act of any Legislature in India, where any forces and ships of the Indian navy have been placed at the disposal of the Admiralty, the Naval Discipline Act shall have effect as if references therein to His Majesty's navy and His Majesty's ships included references to His Majesty's Indian navy and the ships thereof, without any such modifications or adaptations as aforesaid.

Provisions
as to legis-
lation for
giving effect
to inter-
national
agreements.

106.—(1) The Federal Legislature shall not by reason only of the entry in the Federal Legislative List relating to the implementing of treaties and agreements with other countries have power to make any law for any Province except with the previous consent of the Governor, or for a Federated State except with the previous consent of the Ruler thereof.

(2) So much of any law as is valid only by virtue of any such entry as aforesaid may be repealed by the Federal Legislature and may, on the treaty or agreement in question ceasing to have effect, be repealed as respects any Province or State by a law of that Province or State.

(3) Nothing in this section applies in relation to any law which the Federal Legislature has power to make for a Province or, as the case may be, a Federated State, by virtue of any other entry in the Federal or the Concurrent Legislative List as well as by virtue of the said entry.

107.—(1) If any provision of a Provincial law is repugnant to any provision of a Federal law which the Federal Legislature is competent to enact or to any provision of an existing Indian law with respect to one of the matters enumerated in the Concurrent Legislative List, then, subject to the provisions of this section, the Federal law, whether passed before or after the Provincial law, or, as the case may be, the existing Indian law, shall prevail and the Provincial law shall, to the extent of the repugnancy, be void.

Inconsistency between Federal laws and Provincial, or State, laws.

(2) Where a Provincial law with respect to one of the matters enumerated in the Concurrent Legislative List contains any provision repugnant to the provisions of an earlier Federal law or an existing Indian law with respect to that matter, then if the Provincial law, having been reserved for the consideration of the Governor-General or for the signification of His Majesty's pleasure, has received the assent of the Governor-General or of His Majesty, the Provincial law shall in that Province prevail, but nevertheless the Federal Legislature may at any time enact further legislation with respect to the same matter.

Provided that no Bill or amendment for making any provision repugnant to any Provincial law, which, having been so reserved, has received the assent of the Governor-General or of His Majesty, shall be introduced or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion.

(3) If any provision of a law of a Federated State is repugnant to a Federal law which extends to that State, the Federal law, whether passed before or after the law of the State, shall

prevail and the law of the State shall, to the extent of the repugnancy, be void.

CHAPTER II.

RESTRICTIONS ON LEGISLATIVE POWERS.

Sanction of
Governor-
General or
Governor
required for
certain
legislative
proposals.

108.—(1) Unless the Governor-General in his discretion thinks fit to give his previous sanction, there shall not be introduced into, or, moved in, either Chamber of the Federal Legislature, any Bill or amendment which—

- (a) repeals, amends or is repugnant to any provisions of any Act of Parliament extending to British India; or
- (b) repeals, amends or is repugnant to any Governor-General's or Governor's Act, or any ordinance promulgated in his discretion by the Governor-General or a Governor; or
- (c) affects matters as respects which the Governor-General is, by or under this Act, required to act in his discretion; or
- (d) repeals, amends or affects any Act relating to any police force; or
- (e) affects the procedure for criminal proceedings in which European-British subjects are concerned; or
- (f) subjects persons not resident in British India to greater taxation than persons resident in British India or subjects companies not wholly controlled and managed in British India to greater taxation than companies wholly controlled and managed therein; or
- (g) affects the grant of relief from any Federal tax on income in respect of income taxed or taxable in the United Kingdom.

(2) Unless the Governor-General in his discretion thinks fit

to give his previous sanction, there shall not be introduced into, or moved in, a Chamber of a Provincial Legislature any Bill or amendment which—

- (a) repeals, amends, or is repugnant to any provisions of any Act of Parliament extending to British India; or
- (b) repeals, amends or is repugnant to any Governor-General's Act, or any ordinance promulgated in his discretion by the Governor-General; or
- (c) affects matters as respects which the Governor-General is by or under this Act, required to act in his discretion; or
- (d) affects the procedure for criminal proceedings in which European British subjects are concerned;

and unless the Governor of the Province in his discretion thinks fit to give his previous sanction, there shall not be introduced or moved any Bill or amendment which—

- (i) repeals, amends or is repugnant to any Governor's Act, or any ordinance promulgated in his discretion by the Governor; or
- (ii) repeals, amends or affects any Act relating to any police force.

(3) Nothing in this section affects the operation of any other provision in this Act which requires the previous sanction of the Governor-General or of a Governor to the introduction of any Bill or the moving of any amendment.

109.—(1) Where under any provision of this Act the previous sanction or recommendation of the Governor-General or of a Governor is required to the introduction or passing of a Bill or the moving of an amendment, the giving of the sanction or recommendation shall not be construed as precluding him from exercising subsequently in regard to the Bill in question any

Require-
ments as to
sanctions
and recom-
mendations
to be
regarded as
matters of
procedure
only.

powers conferred upon him by this Act, with respect to the withholding of assent to, or the reservation of, Bills.

(2) No Act of the Federal Legislature or a Provincial Legislature, and no provision in any such Act, shall be invalid by reason only that some previous sanction or recommendation was not given, if assent to that Act was given—

- (a) where the previous sanction or recommendation required was that of the Governor, either by the Governor, by the Governor-General, or by His Majesty;
- (b) where the previous sanction or recommendation required was that of the Governor-General, either by the Governor-General or by His Majesty.

Savings.

110. Nothing in this Act shall be taken—

- (a) to affect the power of Parliament to legislate for British India, or any part thereof; or
- (b) to empower the Federal Legislature, or any Provincial Legislature—
 - (i) to make any law affecting the Sovereign or the Royal Family, or the Succession to the Crown, or the sovereignty, dominion or suzerainty of the Crown in any part of India, or the law of British nationality, or the Army Act, the Air Force Act, or the Naval Discipline Act, or the law of Prize or Prize courts; or
 - (ii) except in so far as is expressly permitted by any subsequent provisions of this Act, to make any law amending any provision of this Act, or any Order in Council made thereunder, or any rules made under this Act by the Secretary of State, or by the Governor-General or a Governor in his discretion, or in the exercise of his individual judgment; or

- (iii) except in so far as is expressly permitted by any subsequent provisions of this Act, to make any law derogating from any prerogative right of His Majesty to grant special leave to appeal from any court.

CHAPTER III.

PROVISIONS WITH RESPECT TO DISCRIMINATION, &c.

111.—(1) Subject to the provisions of this chapter, a British subject domiciled in the United Kingdom shall be exempt from the operation of so much of any Federal or Provincial law as—

British
subjects
domiciled in
the United
Kingdom.

- (a) imposes any restriction on the right of entry into British India; or
- (b) imposes by reference to place of birth, race, descent, language, religion, domicile, residence or duration of residence, any disability, liability, restriction or condition in regard to travel, residence, the acquisition, holding, or disposal of property, the holding of public office, or the carrying on of any occupation, trade, business or profession :

Provided that no person shall by virtue of this subsection be entitled to exemption from any such restriction, condition, liability or disability as aforesaid if and so long as British subjects domiciled in British India are by or under the law of the United Kingdom subject in the United Kingdom to a like restriction, condition, liability, or disability imposed in regard to the same subject matter by reference to the same principle of distinction.

(2) For the purposes of the preceding subsection, a provision, whether of the law of British India or of the law of the United Kingdom, empowering any public authority to impose

quarantine regulations, or to exclude or deport individuals, wherever domiciled, who appear to that authority to be undesirable persons, shall not be deemed to be a restriction on the right of entry.

(3) Notwithstanding anything in this section, if the Governor-General or, as the case may be, the Governor of any Province, by public notification certifies that for the prevention of any grave menace to the peace or tranquillity of any part of India or, as the case may be, of any part of the Province, or for the purpose of combating crimes of violence intended to overthrow the Government, it is expedient that the operation of the provisions of subsection (1) of this section should be wholly or partially suspended in relation to any law, then while the notification is in force the operation of those provisions shall be suspended accordingly.

The functions of the Governor-General and of a Governor under this subsection shall be exercised by him in his discretion.

Taxation.

112.—(1) No Federal or Provincial law which imposes any liability to taxation shall be such as to discriminate against British subjects domiciled in the United Kingdom or Burma or companies incorporated, whether before or after the passing of this Act, by or under the laws of the United Kingdom or Burma, and any law passed or made in contravention of this section shall, to the extent of the contravention, be invalid.

(2) Without prejudice to the generality of the foregoing provisions, a law shall be deemed to be such as to discriminate against such persons or companies as aforesaid if it would result in any of them being liable to greater taxation than that to which they would be liable if domiciled in British India or incorporated by or under the laws of British India, as the case may be.

(3) For the purposes of this section a company incorporated before the commencement of Part III of this Act under any existing Indian law and registered thereunder in Burma shall be

deemed to be a company incorporated by or under the laws of Burma.

113.—(1) Subject to the following provisions of this chapter, a company incorporated, whether before or after the passing of this Act, by or under the laws of the United Kingdom, and the members of the governing body of any such company and the holders of its shares, stock, debentures, debenture stock or bonds, and its officers, agents, and servants, shall be deemed to comply with so much of any Federal or Provincial law as imposes in regard to companies carrying on or proposing to carry on business in British India requirements or conditions relating to or connected with—

Companies
incorporat-
ed in the
United
Kingdom.

- (a) the place of incorporation of a company or the situation of its registered office, or the currency in which its capital or loan capital is expressed; or
- (b) the place of birth, race, descent, language, religion, domicile, residence or duration of residence of members of the governing body of a company, or of the holders of its shares, stock, debentures, debenture stock or bonds, or of its officers, agents or servants:

Provided that no company or person shall by virtue of this section be deemed to comply with any such requirement or condition as aforesaid if and so long as a like requirement or condition is imposed by or under the law of the United Kingdom in regard to companies incorporated by or under the laws of British India and carrying on or proposing to carry on business in the United Kingdom.

(2) If and in so far as any total or partial exemption from, or preferential treatment in respect of, taxation imposed on companies by or under any Federal or Provincial law depends on compliance with conditions as to any of the matters mentioned in subsection (1) of this section, any company incorporated by or under the laws of the United Kingdom carrying on business in

British India shall be deemed to satisfy those conditions and be entitled to the exemption or preferential treatment accordingly, so long as the taxation imposed by or under the laws of the United Kingdom on companies incorporated by or under the laws of British India and carrying on business in the United Kingdom does not depend on compliance with conditions as to any of the matters so mentioned.

Companies
incorporat-
ed in India.

114.—(1) Subject to the following provisions of this chapter, a British subject domiciled in the United Kingdom shall be deemed to comply with so much of any Federal or Provincial law as imposes in regard to companies incorporated or proposed to be incorporated whether before or after the passing of this Act. by or under the laws of British India, any requirements or conditions relating to, or connected with, the place of birth, race, descent, language, religion, domicile, residence or duration of residence of members of the governing body of a company, or of the holders of its shares, stock, debentures, debenture stock or bonds, or of its officers, agents or servants :

Provided that no person shall by virtue of this section be deemed to comply with any such requirement or condition as aforesaid if and so long as a like requirement or condition is imposed by or under the law of the United Kingdom in regard to companies incorporated or proposed to be incorporated by or under the laws of the United Kingdom on British subjects domiciled in British India.

(2) If and in so far as, in the case of any such companies as aforesaid, any total or partial exemption from, or preferential treatment in respect of, taxation imposed by or under any Federal or Provincial law depends on compliance with conditions as to any of the matters aforesaid, then, so far as regards such members of its governing body and such of the holders of its shares, stock, debentures, debenture stock or bonds, and such of its

officers, agents, and servants, as are British subjects domiciled in the United Kingdom, any such company shall be deemed to satisfy those conditions and be entitled to the exemption or preferential treatment accordingly, so long as the taxation imposed by or under the laws of the United Kingdom on companies incorporated by or under those laws does not, as regards such of the members of a company's governing body, or such of the holders of its shares, stock, debentures, debenture stock or bonds, or such of its officers, agents, or servants, as are British subjects domiciled in British India, depend on compliance with conditions as to any of the matters aforesaid.

(3) For the purposes of this section, but not for the purposes of any other provision of this chapter, a company incorporated before the commencement of Part III of this Act under any existing Indian law and registered thereunder in Burma, shall be deemed to be a company incorporated by or under the laws of British India.

115.—(1) No ship registered in the United Kingdom shall be subjected by or under any Federal or Provincial law to any treatment affecting either the ship herself, or her master, officers, crew, passengers or cargo, which is discriminatory in favour of ships registered in British India, except in so far as ships registered in British India are for the time being subjected by or under any law of the United Kingdom to treatment of a like character which is similarly discriminatory in favour of ships registered in the United Kingdom

Ships and
aircraft.

(2) This section shall apply in relation to aircraft as it applies in relation to ships.

(3) The provisions of this section are in addition to and not in derogation of the provisions of any of the preceding sections of this chapter.

Subsidies
for the
encourage-
ment of
trade or
industry.

116.—(1) Notwithstanding anything in any Act of the Federal Legislature or of a Provincial Legislature, companies incorporated, whether before or after the passing of this Act, by or under the laws of the United Kingdom and carrying on business in India shall be eligible for any grant, bounty or subsidy payable out of the revenues of the Federation or of a Province for the encouragement of any trade or industry to the same extent as companies incorporated by or under the laws of British India are eligible therefor :

Provided that this subsection shall not apply in relation to any grant, bounty or subsidy for the encouragement of any trade or industry, if and so long as under the law of the United Kingdom for the time being in force companies incorporated by or under the laws of British India and carrying on business in the United Kingdom are not equally eligible with companies incorporated by or under the laws of the United Kingdom for the benefit of any grant, bounty or subsidy payable out of public moneys in the United Kingdom for the encouragement of the same trade or industry.

(2) Notwithstanding anything in this chapter, an Act of the Federal Legislature or of a Provincial Legislature may require, in the case of a company which at the date of the passing of that Act was not engaged in British India in that branch of trade or industry which it is the purpose of the grant, bounty or subsidy to encourage, that the company shall not be eligible for any grant, bounty or subsidy under the Act unless and until—

- (a) the company is incorporated by or under the laws of British India or, if the Act so provides, is incorporated by or under the laws of British India or of a Federated State; and
- (b) such proportion, not exceeding one half, of the members of its governing body as the Act may prescribe, are British subjects domiciled in India or, if the Act

so provides, are either British subjects domiciled in India or subjects of a Federated State; and

- (c) the company gives such reasonable facilities as may be so prescribed for the training of British subjects domiciled in India or, if the Act so provides, of British subjects domiciled in India or subjects of a Federated State.

(3) For the purposes of this section a company incorporated by or under the laws of the United Kingdom shall be deemed to be carrying on business in India if it owns ships which habitually trade to and from ports in India.

117.—The foregoing provisions of this chapter shall apply in relation to any ordinance, order, byelaw, rule or regulation passed or made after the passing of this Act and having by virtue of any existing Indian law, or of any law of the Federal or any Provincial Legislature, the force of law as they apply in relation to Federal and Provincial laws, but, save as aforesaid, nothing in those provisions shall affect the operation of any existing Indian law. Supplemental.

118.—(1) If after the establishment of the Federation a convention is made between His Majesty's Government in the United Kingdom and the Federal Government whereby similarity of treatment is assured in the United Kingdom to British subjects domiciled in British India and to companies incorporated by or under the laws of British India and in British India to British subjects domiciled in the United Kingdom and to companies incorporated by or under the laws of the United Kingdom, respectively, in respect of the matters, or any of the matters, with regard to which provision is made in the preceding sections of this chapter, His Majesty may, if he is satisfied that all necessary legislation has been enacted both in the United Kingdom and in India for the purpose of giving effect to the convention, by Order in Council declare that the purposes of those sections are to such Power to secure reciprocal treatment by convention.

extent as may be specified in the Order sufficiently fulfilled by that convention and legislation, and while any such Order is in force, the operation of those sections shall to that extent be suspended.

(2) An Order in Council under this section shall cease to have effect if and when the convention to which it relates expires or is terminated by either party thereto.

Professional
and techni-
cal qualifi-
cations in
general.

119.—(1) No Bill or amendment which prescribes, or empowers any authority to prescribe, the professional or technical qualifications which are to be requisite for any purpose in British India or which imposes, or empowers any authority to impose, by reference to any professional or technical qualification, any disability, liability, restriction or condition in regard to the practising of any profession, the carrying on of any occupation, trade or business, or the holding of any office in British India, shall be introduced or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion, or in a Chamber of a Provincial Legislature without the previous sanction of the Governor in his discretion.

(2) The Governor-General or a Governor shall not give his sanction for the purposes of the preceding sub-section unless he is satisfied that the proposed legislation is so framed as to secure that no person who, immediately before the coming into operation of any disability, liability, restriction or condition to be imposed by or under that legislation, was lawfully practising any profession, carrying on any occupation, trade, or business, or holding any office in British India shall, except in so far as may be necessary in the interests of the public, be debarred from continuing to practise that profession, carry on that occupation, trade or business, or hold that office, or from doing anything in the course of that profession, occupation, trade or business, or in the discharge of the duties of that office which he could law-

fully have done if that disability, liability, restriction or condition had not come into operation.

(3) All regulations made under the provisions of any Federal or Provincial law which prescribe the professional or technical qualifications which are to be requisite for any purpose in British India or impose, by reference to any professional or technical qualification, any disability, liability, restriction or condition in regard to the practising of any profession, the carrying on of any occupation, trade or business, or the holding of any office in British India, shall, not less than four months before they are expressed to come into operation, be published in such manner as may be required by general or special directions of the Governor-General, or, as the case may be, the Governor, and, if within two months from the date of the publication complaint is made to the Governor-General or, as the case may be, the Governor that the regulations or any of them will operate unfairly as against any class of persons affected thereby, the Governor-General or Governor, if he is of opinion that the complaint is well founded, may, at any time before the regulations are expressed to come into operation, by public notification disallow the regulations or any of them.

In this subsection the expression "regulations" includes rules, byelaws, orders and ordinances.

In the discharge of his functions under this subsection the Governor-General or a Governor shall exercise his individual judgment.

(4) If the Governor-General exercising his individual judgment by public notification directs that the provisions of the last preceding subsection shall apply in relation to any existing Indian law, those provisions shall apply in relation to that law accordingly, and the functions which under those provisions are to be performed in relation to a Federal law by the Governor-General and in relation to a Provincial law by the Governor shall, in rela-

tion to that existing Indian law, be performed, according as may be directed by the notification, by the Governor-General exercising his individual judgment, by the Governor exercising his individual judgment or partly by the one and partly by the other of them.

Medical
qualifica-
tions.

120.—(1) So long as the condition set out in subsection (3) of this section continues to be fulfilled, a British subject domiciled in the United Kingdom or India who, by virtue of a medical diploma granted to him in the United Kingdom, is, or is entitled to be, registered in the United Kingdom as a qualified medical practitioner shall not by or under any existing Indian law or any law of the Federal or any Provincial Legislature, be excluded from practising medicine, surgery or midwifery in British India, or in any part thereof, or from being registered as qualified so to do, on any ground other than the ground that the diploma held by him does not furnish a sufficient guarantee of his possession of the requisite knowledge and skill for the practice of medicine, surgery and midwifery, and he shall not be so excluded on that ground unless a law of the Federation or of the Province, as the case may be, makes provision for securing—

(a) that no proposal for excluding the holders of any particular diploma from practice or registration shall become operative until the expiration of twelve months after notice thereof has been given to the Governor-General and to the University or other body granting that diploma; and

(b) that such a proposal shall not become operative or, as the case may be, shall cease to operate if the Privy Council on an application made to them under the next succeeding subsection determine that the diploma in question ought to be recognised as furnishing such a sufficient guarantee as aforesaid.

(2) If any University or other body in the United Kingdom

which grants a medical diploma, or any British subject who holds such a diploma, is aggrieved by the proposal to exclude holders of that diploma from practice or registration in British India, that body or person may make an application to the Privy Council, and the Privy Council, after giving to such authorities and persons both in British India and in the United Kingdom as they think fit an opportunity of tendering evidence or submitting representations in writing, shall determine whether the diploma in question does or does not furnish a sufficient guarantee of the possession of the requisite knowledge and skill for the practice of medicine, surgery and midwifery, and shall notify their determination to the Governor-General, who shall communicate it to such authorities, and cause it to be published in such manner, as he thinks fit.

(3) The condition referred to in subsection (1) of this section is that British subjects domiciled in India who hold a medical diploma granted after examination in British India shall not be excluded from practising medicine, surgery or midwifery in the United Kingdom or from being registered therein as qualified medical practitioners, except on the ground that that diploma does not furnish a sufficient guarantee of the possession of the requisite knowledge and skill for the practice of medicine, surgery and midwifery, and shall only be excluded on that ground so long as the law of the United Kingdom makes provision for enabling any question as to the sufficiency of that diploma to be referred to and decided by the Privy Council.

(4) A medical practitioner entitled to practise or to be registered in British India by virtue of a diploma granted in the United Kingdom, or in the United Kingdom by virtue of a diploma granted in British India, shall not in the practice of his profession be subjected to any liability, disability, restriction or condition to which persons entitled to practise by virtue of diplomas granted in the other country are not subject.

(5) The foregoing provisions of this section shall, subject to the modifications hereinafter mentioned, apply in relation to British subjects domiciled in Burma who, by virtue of medical diplomas granted to them in Burma or the United Kingdom, are, or are entitled to be, registered in the United Kingdom as qualified medical practitioners as they apply in relation to British subjects domiciled in the United Kingdom who, by virtue of medical diplomas granted in the United Kingdom, are, or are entitled to be, registered in the United Kingdom as qualified medical practitioners.

The said modifications are as follows, that is to say,—

- (a) subsection (3) shall not apply and the reference in subsection (1) to the condition set out therein shall be deemed to be omitted;
- (b) any reference in subsection (2) or subsection (4) to the United Kingdom shall be construed as a reference to Burma.

(6) Nothing in this section shall be construed as affecting any power of any recognised authority in the United Kingdom or British India to suspend or debar any person from practice on the ground of misconduct, or to remove any person from a register on that ground.

(7) In this section the expression "diploma" includes any certificate, degree, fellowship, or other document or status granted to persons passing examinations.

121. A person who holds a commission from His Majesty as a medical officer in the Indian Medical Service or any other branch of His Majesty's forces and is on the active list shall by virtue of that commission be deemed to be qualified to practise medicine, surgery and midwifery in British India, and be entitled to be registered in British India or any part thereof as so qualified.

PART VI.

ADMINISTRATIVE RELATIONS BETWEEN
FEDERATION, PROVINCES AND STATES.*General.*

122.—(1) The executive authority of every Province and Federated State shall be so exercised as to secure respect for the laws of the Federal Legislature which apply in that Province or State. Obligation of units and Federation.

(2) The reference in subsection (1) of this section to laws of the Federal Legislature shall, in relation to any Province, include a reference to any existing Indian law applying in that Province.

(3) Without prejudice to any of the other provisions of this Part of this Act, in the exercise of the executive authority of the Federation in any Province or Federal State regard shall be had to the interests of that Province or State.

124.—(1) Notwithstanding anything in this Act, the Governor-General may, with the consent of the Government of a Province or the Ruler of a Federated State, entrust either conditionally or unconditionally to that Government or Ruler, or to their respective officers, functions in relation to any matter to which the executive authority of the Federation extends. Power of Federation to confer powers, &c. on Provinces and States in certain cases.

(2) An Act of the Federal Legislature may, notwithstanding that it relates to a matter with respect to which a Provincial Legislature has no power to make laws, confer powers and impose duties upon a Province or officers and authorities thereof.

(3) An Act of the Federal Legislature which extends to a Federated State may confer powers and impose duties upon the State or officers and authorities thereof to be designated for the purpose by the Ruler.

(4) Where by virtue of this section powers and duties have

been conferred or imposed upon a Province or Federated State or officers or authorities thereof, there shall be paid by the Federation to the Province or State such sum as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of any extra costs of administration incurred by the Province or State in connection with the exercise of those powers and duties.

Adminis-
tration of
Federal
Acts in
Indian
States.,

125.—(1) Notwithstanding anything in this Act, agreements may, and, if provision has been made in that behalf by the Instrument of Accession of the State, shall, be made between the Governor-General and the Ruler of a Federated State for the exercise by the Ruler or his officers of functions in relation to the administration in his State of any law of the Federal Legislature which applies therein.

(2) An agreement made under this section shall contain provisions enabling the Governor-General in his discretion to satisfy himself, by inspection or otherwise, that the administration of the law to which the agreement relates is carried out in accordance with the policy of the Federal Government and, if he is not so satisfied, the Governor-General, acting in his discretion, may issue such directions to the Ruler as he thinks fit.

(3) All courts shall take judicial notice of any agreement made under this section.

Control of
Federation
over Pro-
vince in
certain
cases.

126.—(1) The executive authority of every Province shall be so exercised as not to impede or prejudice the exercise of the executive authority of the Federation, and the executive authority of the Federation shall extend to the giving of such directions to a Province as may appear to the Federal Government to be necessary for that purpose.

(2) The executive authority of the Federation shall also extend to the giving of directions to a Province as to the carrying into execution therein of any Act of the Federal Legislature which

relates to a matter specified in Part II of the Concurrent Legislative List and authorises the giving of such directions :

Provided that a Bill or amendment which proposes to authorise the giving of any such directions as aforesaid shall not be introduced into or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion.

(3) The executive authority of the Federation shall also extend to the giving of directions to a Province as to the construction and maintenance of means of communication declared in the direction to be of military importance :

Provided that nothing in this subsection shall be taken as restricting the power of the Federation to construct and maintain means of communication as part of its functions with respect to naval, military and air force works.

(4) If it appears to the Governor-General that in any Province effect has not been given to any directions given under this section, the Governor-General, acting in his discretion, may issue as orders to the Governor of that Province either the directions previously given or those directions modified in such manner as the Governor-General thinks proper.

(5) Without prejudice to his powers under the last preceding subsection, the Governor-General, acting in his discretion, may at any time issue orders to the Governor of a Province as to the manner in which the executive authority thereof is to be exercised for the purpose of preventing any grave menace to the peace or tranquillity of India or of any part thereof.

127. The Federation may, if it deems it necessary to acquire any land situate in a Province for any purpose connected with a matter with respect to which the Federal Legislature has power to make laws, require the Province to acquire the land on behalf, and at the expense, of the Federation or, if the land belongs to the Province, to transfer it to the Federation on such

Acquisition
of land for
Federal
purposes.

Part
III (B)

Ss. 128—
129

terms as may be agreed or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India.

Duty of
Ruler of a
State as
respects
Federal
subjects.

128.—(1) The executive authority of every Federated State shall be so exercised as not to impede or prejudice the exercise of the executive authority of the Federation so far as it is exercisable in the State by virtue of a law of the Federal Legislature which applies therein.

(2) If it appears to the Governor-General that the Ruler of any Federated State has in any way failed to fulfil his obligations under the preceding subsection, the Governor-General, acting in his discretion, may after considering any representations made to him by the Ruler issue such directions to the Ruler as he thinks fit:

Provided that, if any question arises under this section as to whether the executive authority of the Federation is exercisable in a State with respect to any matter or as to the extent to which it is so exercisable, the question may, at the instance either of the Federation or the Ruler, be referred to the Federal Court for determination by that Court in the exercise of its original jurisdiction under this Act.

Broadcasting.

129.—(1) The Federal Government shall not unreasonably refuse to entrust to the Government of any Province or the Ruler of any Federated State such functions with respect to broadcasting as may be necessary to enable that Government or Ruler—

(a) to construct and use transmitters in the Province or State;

(b) to regulate, and impose fees in respect of, the construction and use of transmitters and the use of receiving apparatus in the Province or State:

Broad-
casting.

Provided that nothing in this subsection shall be construed as requiring the Federal Government to entrust to any such Government or Ruler any control over the use of transmitters constructed or maintained by the Federal Government or by persons authorised by the Federal Government, or over the use of receiving apparatus by persons so authorised.

(2) Any functions so entrusted to a Government or Ruler shall be exercised subject to such conditions as may be imposed by the Federal Government, including, notwithstanding anything in this Act, any conditions with respect to finance, but it shall not be lawful for the Federal Government so to impose any conditions regulating the matter broadcast by, or by authority of, the Government or Ruler.

(3) Any Federal laws which may be passed with respect to broadcasting shall be such as to secure that effect can be given to the foregoing provisions of this section.

(4) If any question arises under this section whether any conditions imposed on any such Government or Ruler are lawfully imposed, or whether any refusal by the Federal Government to entrust functions is unreasonable, the question shall be determined by the Governor-General in his discretion.

(5) Nothing in this section shall be construed as restricting the powers conferred on the Governor-General by this Act for the prevention of any grave menace to the peace or tranquillity of India or any part thereof, or as prohibiting the imposition on Governments or Rulers of such conditions regulating matter broadcast as appear to be necessary to enable the Governor-General to discharge his functions in so far as he is by or under this Act required in the exercise thereof to act in his discretion or to exercise his individual judgment.

Interference with Water Supplies.

130. If it appears to the Government of any Governor's Province or to the Ruler of any Federated State that the interests of

Complaints
as to inter-
ference

with water
supplies.

that Province or State, or of any of the inhabitants thereof, in the water from any natural source of supply in any Governor's or Chief Commissioner's Province or Federated State, have been, or are likely to be, affected prejudicially by—

(a) any executive action or legislation taken or passed, or proposed to be taken or passed; or

(b) the failure of any authority to exercise any of their powers,

with respect to the use, distribution or control of water from that source, the Government or Ruler may complain to the Governor-General.

Decision of
complaints.

131.—(1) If the Governor-General receives such a complaint as aforesaid, he shall unless he is of opinion that the issues involved are not of sufficient importance to warrant such action, appoint a Commission consisting of such persons having special knowledge and experience in irrigation, engineering, administration, finance or law, as he thinks fit, and request that Commission to investigate in accordance with such instructions as he may give to them, and to report to him on, the matters to which the complaint relates, or such of those matters as he may refer to them.

(2) A Commission so appointed shall investigate the matters referred to them and present to the Governor-General a report setting out the facts as found by them and making such recommendations as they think proper.

(3) If it appears to the Governor-General upon consideration of the Commission's report that anything therein contained requires explanation, or that he needs guidance upon any point not originally referred by him to the Commission, he may again refer the matter to the Commission for further investigation and a further report.

(4) For the purpose of assisting a Commission appointed under this section in investigating any matters referred to them, the Federal Court, if requested by the Commission so to do, shall

make such orders and issue such letters of request for the purposes of the proceedings of the Commission as they may make or issue in the exercise of the jurisdiction of the court.

(5) After considering any report made to him by the Commission, the Governor-General shall give such decision and make such order, if any, in the matter of the complaint as he may deem proper :

Provided that if, before the Governor-General has given any decision, the Government of any Province or the Ruler of any State affected request him so to do, he shall refer the matter to His Majesty in Council and His Majesty in Council may give such decision and make such order, if any, in the matter as he deems proper.

(6) Effect shall be given in any Province or State affected to any order made under this section by His Majesty in Council or the Governor-General, and any Act of a Provincial Legislature or of a State which is repugnant to the order shall, to the extent of the repugnancy, be void.

(7) Subject as hereinafter provided the Governor-General, on application made to him by the Government of any Province, or the Ruler of any State affected, may at any time, if after a reference to, and report from, a Commission appointed as aforesaid he considers it proper so to do, vary any decision or order given or made under this section :

Provided that, where the application relates to a decision or order of His Majesty in Council and in any other case if the Government of any Province or the Ruler of any State affected request him so to do, the Governor-General shall refer the matter to His Majesty in Council and His Majesty in Council may, if he considers proper so to do, vary the decision or order

(8) An order made by His Majesty in Council or the Governor-General under this section may contain directions as to the Government or persons by whom the expenses of the Com-

mission and any cost incurred by any Province, State or persons in appearing before the Commission are to be paid, and may fix the amount of any expenses or costs to be so paid, and so far as it relates to expenses or costs, may be enforced as if it were an order made by the Federal Court.

(9) The functions of the Governor-General under this section shall be exercised by him in his discretion.

NOTES.

Object of the section.—

In the past the States have been complaining that complete justice has not been done to them by the Paramount Power, in their decisions of disputes regarding water rights between British India and the States. They demanded that the principles governing such cases should be codified and applied uniformly. Provision has now been made by this section, to refer such disputes to an Expert Commission.

Interference
with water
supplies of
Chief Com-
missioner's
Province.

132. If it appears to the Governor-General that the interests of any Chief Commissioner's Province, or of any of the inhabitants of such a Province, in the water from any natural source of supply in any Governor's Province or Federated State have been or are likely to be affected prejudicially by—

(a) any executive action or legislation taken or passed, or proposed to be taken or passed; or

(b) the failure of any authority to exercise any of their powers,

with respect to the use, distribution or control of water from that source, he may, if he in his discretion thinks fit, refer the matter to a Commission appointed in accordance with the provisions of the last preceding section and thereupon those provisions shall apply as if the Chief Commissioner's Province were a Governor's Province and as if a complaint with respect to the matter had been made by the Government of that Province to the Governor-General.

133. Notwithstanding anything in this Act, neither the Federal Court nor any other court shall have jurisdiction to entertain any action or suit in respect of any matter if action in respect of that matter might have been taken under any of the three last preceding sections by the Government of a Province, the Ruler of a State, or the Governor-General.

Jurisdiction of Courts excluded.

134. The provisions contained in this Part of this Act with respect to interference with water supplies shall not apply in relation to any Federated State the Ruler whereof has declared in his Instrument of Accession that those provisions are not to apply in relation to his State.

Ruler of State may exclude application of provisions as to water supply.

Inter-Provincial Co-operation.

135. If at any time it appears to His Majesty upon consideration of representations addressed to him by the Governor-General that the public interests would be served by the establishment of an Inter-Provincial Council charged with the duty of—

Provisions with respect to an inter-Provincial Council.

- (a) inquiring into and advising upon disputes which may have arisen between Provinces;
- (b) investigating and discussing subjects in which some or all of the Provinces, or the Federation and one or more of the Province, have a common interest; or
- (c) making recommendations upon any such subject and, in particular, recommendations for the better co-ordination of policy and action with respect to that subject,

it shall be lawful for His Majesty in Council to establish such a Council, and to define the nature of the duties to be performed by it and its organisation and procedure.

An Order establishing any such Council may make provision for representatives of Indian States to participate in the work of the Council.

PART VII.

FINANCE, PROPERTY, CONTRACTS AND SUITS.

CHAPTER I.

FINANCE.

Distribution of Revenues between the Federation and the Federal Units.

Meaning of
"revenues
of Federa-
tion" and
"revenues
of Pro-
vince".

136. Subject to the following provisions of this chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to Provinces and Federated States, and subject to the provisions of this Act with respect to the Federal Railway Authority, the expression "revenues of the Federation" includes all revenues and public moneys raised or received by the Federation, and the expression "revenues of the Province" includes all revenues and public moneys raised or received by a Province.

Certain
succession
duties,
stamp
duties,
terminal
taxes and
taxes on
fares and
freights.

137. Duties in respect of succession to property other than agricultural land, such stamp duties as are mentioned in the Federal Legislative List, terminal taxes on goods or passengers carried by railway, or air and taxes on railway fares and freights, shall be levied and collected by the Federation, but the net proceeds in any financial year of any such duty or tax, except in so far as those proceeds represent proceeds attributable to Chief Commissioners' Provinces, shall not form part of the revenues of the Federation, but shall be assigned to the Provinces and to the Federated States, if any, within which that duty or tax is leviable in that year, and shall be distributed among the Provinces and those States in accordance with such principles of distribution as may be formulated by Act of the Federal Legislature :

Provided that the Federal Legislature may at any time increase any of the said duties or taxes by a surcharge for Federal purposes and the whole proceeds of any such surcharge shall form part of the revenues of the Federation.

138.—(1) Taxes on income other than agricultural income shall be levied and collected by the Federation, but a prescribed percentage of the net proceeds in any financial year of any such tax, except in so far as those proceeds represent proceeds attributable to Chief Commissioners' Provinces or to taxes payable in respect of Federal emoluments, shall not form part of the revenues of the Federation, but shall be assigned to the Provinces and to the Federated States, if any, within which that tax is leviable in that year, and shall be distributed among the Provinces and those States in such manner as may be prescribed :

Provided that—

- (a) the percentage originally prescribed under this subsection shall not be increased by any subsequent Order in Council ;
- (b) the Federal Legislature may at any time increase the said taxes by a surcharge for Federal purposes and the whole proceeds of any such surcharge shall form part of the revenues of the Federation.

(2) Notwithstanding anything in the preceding subsection, the Federation may retain out of the moneys assigned by that subsection to Provinces and States—

- (a) in each year of a prescribed period such sum as may be prescribed ; and
- (b) in each year of a further prescribed period a sum less than that retained in the preceding year by an amount being the same amount in each year, so calculated that the sum to be retained in the last year of the period will be equal to the amount of each such annual reduction :

Provided that—

- (i) neither of the periods originally prescribed shall be reduced by any subsequent Order in Council ;

(ii) the Governor-General in his discretion may in any year of the second prescribed period direct that the sum to be retained by the Federation in that year shall be the sum retained in the preceding year, and that the second prescribed period shall be correspondingly extended, but he shall not give any such direction except after consultation with such representatives of Federal, Provincial and State interests as he may think desirable, nor shall he give any such direction unless he is satisfied that the maintenance of the financial stability of the Federal Government requires him so to do.

(3) Where an Act of the Federal Legislature imposes a surcharge for Federal purposes under this section, the Act shall provide for the payment by each Federated State in which taxes on income are not leviable by the Federation of a contribution to the revenues of the Federation assessed on such basis as may be prescribed with a view to securing that the contribution shall be the equivalent, as near as may be, of the net proceeds which it is estimated would result from the surcharge if it were leviable in that State, and the State shall become liable to pay that contribution accordingly.

(4) In this section—

“taxes on income” does not include a corporation tax;

“prescribed” means prescribed by His Majesty in Council; and

“Federal emoluments” includes all emoluments and pensions payable out of the revenues of the Federation or of the Federal Railway Authority in respect of which income-tax is chargeable.

Taxes on income.—

The Joint Select Committee pointed out that:—

“Taxes on income derived from federal sources, i.e., federal areas

or emoluments of federal officers, will be permanently assigned to the Federation. Of the yield of the rest of the normal taxes on income (except the corporation tax referred to later) a specified percentage (to be fixed by Order in Council at the last possible moment) is to be assigned to the Provinces. This percentage is to be not less than 50 per cent. nor more than 75 per cent. Out of the sum so assigned to the Provinces the Federal Government will be entitled to retain an amount which will remain constant for three years and will thereafter be reduced gradually to zero over a further period of seven years, power being reserved to the Governor-General to suspend these reductions, if circumstances made it necessary to do so. The Federal Government and Legislature would, in addition, be empowered to impose a surcharge on taxes on income, the proceeds of which would be devoted solely to federal purposes. We understand it to be implicit in this proposal that the power should only be exercisable in times of serious financial stress; and when such surcharges are in operation the States would make contributions to the federal fisc, assessed on a predetermined basis, so as to make them a fair counterpart of the yield of the surcharges from British India."¹⁰

"We understand this to refer to taxes of the nature of the existing Corporation Tax, which is a supertax on the profits of companies. It is proposed that the Federation should retain the yield of this tax and that after ten years the tax should be extended to the States, a right being reserved to any State which prefers that companies subject to the law of the State should not be directly taxed to pay itself to the federal fisc an equivalent lump sum contribution. We appreciate the desire of the States for this measure of elasticity and feel bound to accept it, though we must observe that the details of the arrangement with the States seem likely to be complex and that the adoption of the alternative procedure is economically undesirable."¹¹

139.—(1) Corporation tax shall not be levied by the Federation in any Federated State until ten years have elapsed from the establishment of the Federation. Corpora-
tion tax.

(2) Any Federal law providing for the levying of corporation tax shall contain provisions enabling the Ruler of any Fede-

10. Para 250, page 163, J. C. Report.

11. Para 252, page 163, J. C. Report.

rated State in which the tax would otherwise be leviable to elect that the tax shall not be levied in the State, but that in lieu thereof there shall be paid by the State to the revenues of the Federation a contribution as near as may be equivalent to the net proceeds which it is estimated would result from the tax if it were levied in the State.

(3) Where the Ruler of a State so elects as aforesaid, the officers of the Federation shall not call for any information or returns from any corporation in the State, but it shall be the duty of the Ruler thereof to cause to be supplied to the Auditor-General of India such information as the Auditor-General may reasonably require to enable the amount of any such contribution to be determined.

If the Ruler of a State is dissatisfied with the determination as to the amount of the contribution payable by his State in any financial year, he may appeal to the Federal Court, and if he establishes to the satisfaction of that Court that the amount determined is excessive, the Court shall reduce the amount accordingly and no appeal shall lie from the decision of the Court on the appeal.

Salt duties,
excise duties
and export
duties.

140.—(1) Duties on salt, Federal duties of excise and export duties shall be levied and collected by the Federation, but if an Act of the Federal Legislature so provides, there shall be paid out of the revenues of the Federation to the Provinces and to the Federated States, if any, to which the Act imposing the duty extends, sums equivalent to the whole or any part of the net proceeds of that duty, and those sums shall be distributed among the Provinces and those States in accordance with such principles of distribution as may be formulated by the Act.

(2) Notwithstanding anything in the preceding subsection, one half, or such greater proportion as His Majesty in Council may determine, of the net proceeds in each year of any export ty on jute or jute products shall not form part of the revenues

of the Federation, but shall be assigned to the Provinces or Federated States in which jute is grown in proportion to the respective amounts of jute grown therein.

141.—(1) No Bill or amendment which imposes or varies any tax or duty in which Provinces are interested, or which varies the meaning of the expression “agricultural income” as defined for the purposes of the enactments relating to Indian income-tax, or which affects the principles on which under any of the foregoing provisions of this chapter moneys are or may be distributable to Provinces or States, or which imposes any such Federal surcharge as is mentioned in the foregoing provisions of this chapter, shall be introduced or moved in either Chamber of the Federal Legislature except with the previous sanction of the Governor-General in his discretion.

Prior sanction of Governor-General required to Bills affecting taxation in which Provinces are interested.

(2) The Governor-General shall not give his sanction to the introduction of any Bill or the moving of any amendment imposing in any year any such Federal surcharge as aforesaid unless he is satisfied that all practicable economies and all practicable measures for otherwise increasing the proceeds of Federal taxation or the portion thereof retainable by the Federation would not result in the balancing of Federal receipts and expenditure on revenue account in that year.

(3) In this section the expression “tax or duty in which Provinces are interested” means—

- (a) a tax or duty the whole or part of the net proceeds whereof are assigned to any Province; or
- (b) a tax or duty by reference to the net proceeds whereof sums are for the time being payable out of the revenues of the Federation to any Provinces.

142. Such sums as may be prescribed by His Majesty in Council shall be charged on the revenues of the Federation in each year as grants in aid of the revenues of such Provinces as

Grants from Federation to certain Provinces.

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144.

His Majesty may determine to be in need of assistance, and different sums may be prescribed for different Provinces :

Provided that, except in the case of the North-West Frontier Province, no grant fixed under this section shall be increased by a subsequent Order, unless an address has been presented to the Governor-General by both Chambers of the Federal Legislature for submission to His Majesty praying that the increase may be made.

Savings.

143.—(1) Nothing in the foregoing provisions of this chapter affects any duties or taxes levied in any Federated State otherwise than by virtue of an Act of the Federal Legislature applying in the State.

(2) Any taxes, duties, cesses or fees which, immediately before the commencement of Part III of this Act, were being lawfully levied by any Provincial Government, municipality or other local authority or body for the purposes of the Province, municipality, district or other local area under a law in force on the first day of January, nineteen hundred and thirty-five, may, notwithstanding that those taxes, duties cesses or fees are mentioned in the Federal Legislative List, continue to be levied and to be applied to the same purposes until provision to the contrary is made by the Federal Legislature.

Calculation
of "net
proceeds"
&c.

144.—(1) In the foregoing provisions of this chapter "net proceeds" means in relation to any tax or duty the proceeds thereof reduced by the cost of collection, and for the purposes of those provisions the net proceeds of any tax or duty, or of any part of any tax or duty, in or attributable to any area shall be ascertained and certified by the Auditor-General of India, whose certificates shall be final.

(2) Subject as aforesaid, and to any other express provision of this chapter, an Act of the Federal Legislature may, in any case where under this Part of this Act the proceeds of any duty

or tax are or may be, assigned to any Province or State, or a contribution is, or may be, made to the revenues of the Federation by any State, provide for the matter in which the proceeds of any duty or tax and the amount of any contribution are to be calculated, for the times in each year and the manner at and in which any payments are to be made, for the making of adjustments between one financial year and another, and for any other incidental or ancillary matters.

The Crown and the States.

145. There shall be paid to His Majesty by the Federation in each year the sums stated by His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States to be required, whether on revenue account or otherwise, for the discharge of those functions, including the making of any payments in respect of any customary allowances to members of the family or servants of any former Ruler of any territories in India.

Expences of
the Crown
in connec-
tion with
Indian
States.

146. All cash contributions and payments in respect of loans and other payments due from or by any Indian State which, if this Act had not been passed, would have formed part of the revenues of India, shall be received by His Majesty, and shall, if His Majesty has so directed, be placed at the disposal of the Federation, but nothing in this Act shall derogate from the right of His Majesty, if he thinks fit so to do, to remit at any time the whole or any part of any such contributions or payments.

Payments
from or by
Indian
States.

147.—(1). Subject to the provisions of subsection (3) of this section, His Majesty may, in signifying his acceptance of the Instrument of Accession of a State, agree to remit over a period not exceeding twenty years from the date of the accession of the State to the Federation any cash contributions payable by that State.

Remission
of States'
contribu-
tions.

(2) Subject as aforesaid, where any territories have been

voluntarily ceded to the Crown by a Federated State before the passing of this Act—

- (a) in return for specific military guarantees, or
- (b) in return for the discharge of the State from obligations to provide military assistance,

there shall, if His Majesty, in signifying his acceptance of the Instrument of Accession of that State, so directs, be paid to that State, but in the first mentioned case on condition that the said guarantees are waived, such sums as in the opinion of His Majesty ought to be paid in respect of any such cession as aforesaid.

(3) Notwithstanding anything in this section—

- (a) every such agreement or direction as aforesaid shall be such as to secure that no such remission or payment shall be made by virtue of the agreement or direction until the Provinces have begun to receive moneys under the section of this chapter relating to taxes on income, and, in the case of a remission, that the remission shall be complete before the expiration of twenty years from the date of the accession to the Federation of the State in question, or before the end of the second prescribed period referred to in subsection (2) of the said section, whichever first occurs; and
- (b) no contribution shall be remitted by virtue of any such agreement save in so far as it exceeds the value of any privilege or immunity enjoyed by the State; and
- (c) in fixing the amount of any payments in respect of ceded territories, account shall be taken of the value of any such privilege or immunity.

(4) This section shall apply in the case of any cash con-

tributions the liability for which has before the passing of this Act been discharged by payment of a capital sum or sums, and accordingly His Majesty may agree that the capital sum or sums so paid shall be repaid either by instalments or otherwise, and such repayments shall be deemed to be remissions for the purposes of this section.

(5) In this chapter "cash contributions" means—

- (a) periodical contributions in acknowledgment of the suzerainty of His Majesty, including contributions payable in connection with any arrangement for the aid and protection of a State by His Majesty, and contributions in commutation of any obligation of a State to provide military assistance to His Majesty, or in respect of the maintenance by His Majesty of a special force for service in connection with a State, or in respect of the maintenance of local military forces or police, or in respect of the expenses of an agent;
- (b) periodical contributions fixed on the creation or restoration of a State, or on a re-grant or increase of territory, including annual payments for grants of land on perpetual tenure or for equalisation of the value of exchanged territory;
- (c) periodical contributions formerly payable to another State but now payable to His Majesty by right of conquest, assignment or lapse.

(6) In this chapter "privilege or immunity" means any such right, privilege, advantage or immunity of a financial character as is hereinafter mentioned, that is to say—

- (a) rights, privileges or advantages in respect of, or connected with, the levying of sea customs or the production and sale of untaxed salt;

- (b) sums receivable in respect of the abandonment or surrender of the right to levy internal customs duties, or to produce or manufacture salt, or to tax salt or other commodities or goods in transit, or sums receivable in lieu of grants of free salt;
 - (c) the annual value to the Ruler of any privilege or territory granted in respect of the abandonment or surrender of any such right as is mentioned in the last preceding paragraph;
 - (d) privileges in respect of free service stamps or the free carriage of State mails on government business;
 - (e) the privilege of entry free from customs duties of goods imported by sea and transported in bond to the State in question; and
 - (f) the right to issue currency notes,
- not being a right, privilege, advantage or immunity surrendered upon the accession of the State, or one which, in the opinion of His Majesty, for any other reason ought not to be taken into account for the purposes of this chapter.

(7). An Instrument of Accession of a State shall not be deemed to be suitable for acceptance by His Majesty, unless it contains such particulars as appear to His Majesty to be necessary to enable due effect to be given to the provisions of this and the next but one succeeding sections, and in particular provision for determining from time to time the value to be attributed for the purposes of those provisions to any privilege or immunity the value of which is fluctuating or uncertain.

NOTES.

Scope.—

Section 147, contains provisions whereby His Majesty in signifying his acceptance of the Instrument of Accession of a State, may agree to remit over a period of not exceeding twenty years from the date of the

accession of the State to the Federation any cash contributions payable by that State.

Financial adjustments between the Federation and the States—

The Joint Select Committee observed that :—

“The entry of the States into Federation, apart from the major questions referred to above, involves some complicated financial adjustments, mainly in respect of tributes and ceded territories; but these, though of importance to individual States, do not fundamentally affect the Federal finance scheme as a whole. They have been exhaustively examined in the Report of the Indian States Enquiry Committee, 1932, which was also presided over by one of our members. We do not think it necessary to review the intricate adjustments there discussed, and it is sufficient to say that we endorse the main principles on which the Report is based, and in particular the gradual abolition over a period of years (corresponding to the period during which it is proposed to defer the full assignment to the Provinces of a share of the taxes on income) of any contribution paid by a State to the Crown which is in excess of the value of the immunities which it enjoys”¹²

148. Any payments made under the last preceding section and any payments heretofore made to any State by the Governor-General in Council or by any Local Government under any agreements made with that State before the passing of this Act, shall be charged on the revenues of the Federation or on the revenues of the corresponding Province under this Act, as the case may be.

Certain payments to Federated States, &c., to be charged on Federal revenues.

149. Where under the foregoing provisions of this chapter there is made in any year by the Federation to a Federated State any payment or distribution of, or calculated by reference to, the net proceeds of any duty or tax, the value in and for that year of any privilege or immunity enjoyed by that State in respect of any former or existing source of revenue from a similar duty or tax or from goods of the same kind, being a privilege or immunity which has not been otherwise taken into account shall, if and in so far as the Act of the Federal Legislature under which the payment or distribution is made so provides, be set off against the payment or distribution.

Value of privileges and immunities to be set off against share of taxes, &c., assigned to Federated States.

12. Para. 263, page 168, J.C. Report.

Miscellaneous Financial Provisions.

Expendi-
ture defray-
able out of
Indian
revenues.

150.—(1) No burden shall be imposed on the revenues of the Federation or the Provinces except for the purposes of India or some part of India.

(2) Subject as aforesaid, the Federation or a Province may make grants for any purpose, notwithstanding that the purpose is not one with respect to which the Federal or the Provincial Legislature, as the case may be, may make laws.

NOTES.

Provision of electric supply.—

Possibly under the Government of India Act of 1919, it might have been held that the generation and supply of electric current was not one of the purposes of the Government of India within the meaning of section 20 of that Act. But under section 150 of the Government of India Act of 1935, a public utility service such as the provision of electric supply is a purpose of India or of a part of India.¹³

Provisions
as to the
custody of
public
moneys.

151.—(1) Rules may be made by the Governor-General and by the Governor of a Province for the purpose of securing that all moneys received on account of the revenues of the Federation or of the Province, as the case may be, shall, with such exceptions, if any, as may be specified in the rules, be paid into the public account of the Federation or of the Province, and the rules so made may prescribe, or authorise some person to prescribe, the procedure to be followed in respect of the payment of moneys into the said account, the withdrawal of moneys therefrom, the custody of moneys therein, and any other matters connected with or ancillary to the matters aforesaid.

(2) In the exercise of his powers under this section the Governor-General or a Governor shall exercise his individual judgment.

¹³. Lahore Electric Supply Company Ltd., Lahore v. Secretary of State and others, A.I.R. 1938 Lah. 585=40 P.J.L. R. 927.

152.—(1) The functions of the Governor-General with respect to the following matters shall be exercised by him in his discretion, that is to say—

Exercise by Governor-General of certain powers with respect to Reserve Bank.

- (a) the appointment and removal from office of the Governor and Deputy Governors of the Reserve Bank of India, the approval of their salaries and allowances, and the fixing of their terms of office;
- (b) the appointment of an officiating Governor or Deputy Governor of the Bank;
- (c) the supersession of the Central Board of the Bank and any action consequent thereon; and
- (d) the liquidation of the Bank.

(2) In nominating directors of the Reserve Bank of India and in removing from office any director nominated by him, the Governor-General shall exercise his individual judgment.

153. No Bill or amendment which affects the coinage or currency of the Federation or the constitution or functions of the Reserve Bank of India shall be introduced into or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion.

Previous sanction of Governor-General to legislation with respect to Reserve Bank, currency and coinage.

154. Property vested in His Majesty for purposes of the government of the Federation shall, save in so far as any Federal law may otherwise provide, be exempt from all taxes imposed by, or by any authority within, a Province or Federated State.

Exemption of certain public property from taxation.

Provided that, until any Federal law otherwise provides, any property so vested which was immediately before the commencement of Part III of this Act liable, or treated as liable, to any such tax, shall, so long as that tax continues, continue to be liable, or to be treated as liable, thereto.

155.—(1) Subject as hereinafter provided, the Government of a Province and the Ruler of a Federated State shall not

Exemption of Provincial Governments and

Rulers of
Federated
States in
respect of
Federal
taxation.

be liable to Federal taxation in respect of lands or buildings situate in British India or income accruing, arising or received in British India :

Provided that—

- (a) where a trade or business of any kind is carried on by or on behalf of the Government of a Province in any part of British India outside that Province or by a Ruler in any part of British India, nothing in this subsection shall exempt that Government or Ruler from any Federal taxation in respect of that trade or business, or any operations connected therewith or income arising in connection therewith or any property occupied for the purposes thereof;
- (b) nothing in this subsection shall exempt a Ruler from any Federal taxation in respect of any lands, buildings or income being his personal property or personal income.

(2) Nothing in this Act affects any exemption from taxation enjoyed as of right at the passing of this Act by the Ruler of an Indian State in respect of any Indian Government securities issued before that date.

Adjustment
in respect of
certain ex-
penses and
pensions.

156. Where under the provisions of this Act the expenses of any court or commission, or the pension payable to or in respect of a person who has served under the Crown in India, are charged on the revenues of the Federation or the revenues of a Province, then if—

- (a) in the case of a charge on the revenues of the Federation, the court or commission serves any of the separate needs of a Province, or the person has served wholly or in part in connection with the affairs of a Province; or
- (b) in the case of a charge on the revenues of a Province, the court or commission serves any of the separate

needs of the Federation or another Province, or the person has served wholly or in part in connection with the affairs of the Federation or another Province,

there shall be charged on and paid out of the revenues of the Province or, as the case may be, the revenues of the Federation or of the other Province, such contribution in respect of the expenses or pension as may be agreed, or as may in default of agreement be determined by an arbitrator to be appointed by the Chief Justice of India.

157.—(1) The Federation and every Province shall secure that there are from time to time in the hands of the Secretary of State sufficient moneys to enable him to make such payments as he may have to make in respect of any liability which falls to be met out of the revenues of the Federation or of the Province as the case may be.

Duty of
Federation
and Pro-
vinces to
supply
Secretary of
State with
funds.

(2) Without prejudice to their obligations under the preceding subsection, the Federation and every Province shall secure that there are from time to time in the hands of the Secretary of State and the High Commissioner sufficient moneys to enable payment to be made of all pensions payable out of the revenues of the Federation or the Province, as the case may be, in the United Kingdom or through officers accounting to the Secretary of State or to the High Commissioner.

158.—(1) His Majesty in Council may make such provision as may appear to him to be necessary or proper for defining and regulating the relations between the monetary systems of India and Burma and for purposes connected with or ancillary to those purposes, and in particular, but without prejudice to the generality of this section, such provision as may appear to His Majesty to be necessary or proper for the purpose of giving effect to any arrangements with respect to the said matters made before the commencement of Part III of this Act with the approval of

Provisions
as to rela-
tion of
Burma
monetary
system with
India.

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165 the Secretary of State by the Governor of Burma in Council with the Governor-General in Council or any other persons.

(2) Any sums required by an Order under this section to be paid by the Federation shall be charged on the revenues of the Federation.

Relief in respect of tax on income taxable both in India and Burma.

159. His Majesty in Council may make provision for the grant of relief from any Federal tax on income in respect of income taxed or taxable in Burma.

Provisions as to customs duties on India-Burma trade.

160. With a view to preventing undue disturbance of trade between India and Burma in the period immediately following the separation of India and Burma and with a view to safeguarding the economic interests of Burma during that period, His Majesty may by Order in Council give such directions as he thinks fit for those purposes with respect to the duties which are, while the Order is in force, to be levied on goods imported into or exported from India or Burma and with respect to ancillary and related matters.

CHAPTER II.

BORROWING AND AUDIT.

Loans by Federal Government to Federated States.

164. The Federation may, subject to such conditions, if any, as it may think fit to impose, make loans to, or, so long as any limits fixed under the last but one preceding section are not exceeded, give guarantees in respect of loans raised by, any Federated State.

Application of Colonial Stock Acts to stocks issued by Federation.

165.—(1) The Colonial Stock Acts, 1877 to 1900, shall, notwithstanding anything to the contrary in those Acts, apply in relation to sterling stock issued after the establishment of the Federation and forming part of the public debt of the Federation as they apply in relation to stock forming part of the public debt of any British Possession mentioned in those Acts, so however that nothing in section twenty of the Colonial Stock Act, 1877.

shall be construed as compelling a person desirous of bringing proceedings to proceed in the manner therein specified and that, until Parliament otherwise determines, any conditions prescribed by the Treasury under section two of the Colonial Stock Act, 1900, shall be deemed to have been complied with with respect to all such stock so issued by the Federation.

(2) The expression "colonial stock" in section eleven of the Trusts (Scotland) Act, 1921, shall include any stock in relation to which the said Acts apply by virtue of this section.

(3) In paragraph (d) of subsection (1) of section one of the Trustee Act, 1925, the words "or any other securities the interest in sterling whereon is payable out of, and charged on, the revenues of India" shall be repealed :

Provided that, notwithstanding anything in this Act, any securities which by virtue of the said words were immediately before the commencement of Part III of this Act securities in which a trustee might invest trust funds shall continue to be securities in which a trustee may invest such funds.

Audit and Accounts.

166.—(1) There shall be an Auditor-General of India, who shall be appointed by His Majesty and shall only be removed from office in like manner and on the like grounds as a judge of the Federal Court.

Auditor-
General of
India.

(2) The conditions of service of the Auditor-General shall be such as may be prescribed by His Majesty in Council, and he shall not be eligible for further office under the Crown in India after he has ceased to hold his office :

Provided that neither the salary of an Auditor-General nor his rights in respect of leave of absence, pension or age of retirement shall be varied to his disadvantage after his appointment.

(3) The Auditor-General shall perform such duties and

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172

exercise such powers in relation to the accounts of the Federation and of the Provinces as may be prescribed by, or by rules made under, an Order of His Majesty in Council, or by any subsequent Act of the Federal Legislature varying or extending such an Order :

Provided that no Bill or amendment for the purpose aforesaid shall be introduced or moved without the previous sanction of the Governor-General in his discretion.

(4) The salary, allowances and pension payable to or in respect of an Auditor-General shall be charged on the revenues of the Federation, and the salaries, allowances and pensions payable to or in respect of members of his staff shall be paid out of those revenues.

Audit of
accounts
relating
to the
discharge
of the
functions
of the
Crown in
relation to
Indian
States.

171. The accounts relating to the discharge of the functions of the Crown in its relations with Indian States shall be audited by the Auditor-General of India, or, in so far as those accounts concern transactions in the United Kingdom, by the Auditor of Indian Home Accounts acting on his behalf and under his general superintendence, and the Auditor-General of India shall make to the Secretary of State annual reports on the accounts so audited by him or on his behalf.

CHAPTER III.

PROPERTY, CONTRACTS, LIABILITIES. AND SUITS.

Contracts in
connection
with
functions of
Crown in its
relations
with Indian
States.

180.—(1) Any contract made before the commencement of Part III of this Act by or on behalf of the Secretary of State in Council solely in connection with the exercise of the functions of the Crown in its relations with Indian States shall, as from the commencement of Part III of this Act, have effect as if it had been made on behalf of His Majesty and references in any such contract to the Secretary of State in Council shall be construed accordingly.

(2) Any proceedings which if this Act had not been passed might have been brought by or against the Secretary of State in Council in respect of any such contract as aforesaid may be brought by or against the Secretary of State and if at the commencement of Part III of this Act any proceedings in respect of any such contract are pending in the United Kingdom or in India to which the Secretary of State in Council is a party, the Secretary of State shall be deemed to be substituted in those proceedings for the Secretary of State in Council.

(3) Any contract made after the commencement of Part III of this Act on behalf of His Majesty solely in connection with the exercise of the said functions of the Crown shall, if it is such a contract as would have been legally enforceable by or against the Secretary of State in Council, be legally enforceable by or against the Secretary of State.

(4) Any sums ordered to be paid by the Secretary of State by way of debt, damages or costs in any such proceedings as are mentioned in this section and any costs or expenses incurred by him in or in connection with the prosecution or defence thereof shall be deemed to be sums required for the discharge of the functions of the Crown in its relations with Indian States, and any sum received by the Secretary of State by virtue of any such proceedings shall be paid or credited to the Federation.

PART VIII.

THE FEDERAL RAILWAY AUTHORITY.

Executive
authority in
respect of
railways to
be exercised
by Federal
Railway
Authority.

181.—(1) The executive authority of the Federation in respect of the regulation and the construction, maintenance and operation of railways shall be exercised by a Federal Railway Authority (hereinafter referred to as "the Authority").

(2) The said executive authority extends to the carrying on in connection with any Federal railways of such undertakings as, in the opinion of the Authority, it is expedient should be carried on in connection therewith and to the making and carrying into effect of arrangements with other persons for the carrying on by those persons of such undertakings :

Provided that, as respects their powers under this subsection, the Authority shall be subject to any relevant provisions of any Federal, Provincial or existing Indian law, and to the relevant provisions of the law of any Federated State, but nothing in this subsection shall be construed as limiting the provisions of Part VI of this Act regulating the relations of the Federation with Provinces and States.

(3) Notwithstanding anything in this section, the Federal Government or its officers shall perform in regard to the construction, equipment, and operation of railways such functions for securing the safety both of members of the public and of persons operating the railways, including the holding of inquiries into the causes of accidents, as in the opinion of the Federal Government should be performed by persons independent of the Authority and of any railway administration.

So much of Part X of this Act as provides that powers in relation to railway services of the Federation shall be exercised by the Authority shall not apply in relation to officers of the Federal Government employed in the performance of any of the functions mentioned in this subsection.

182.—(1) Not less than three-sevenths of the members of the Authority shall be persons appointed by the Governor-General in his discretion, and the Governor-General shall in his discretion appoint a member of the Authority to be the President thereof.

Composition
&c., of
Railway
Authority.

(2) Subject as aforesaid, the provisions of the English Schedule to this Act, as supplemented or amended by any Act of the Federal Legislature for the time being in force, shall have effect with respect to the appointment, qualifications and conditions of service of members of the Authority, and with respect to the Authority's proceedings, executive staff and liability to income-tax :

Provided that, except with the previous sanction of the Governor-General in his discretion, there shall not be introduced into, or moved in, either Chamber of the Federal Legislature any Bill or any amendment for supplementing or amending the provisions of the said Schedule.

183.—(1) The Authority in discharging their functions under this Act shall act on business principles, due regard being had by them to the interests of agriculture, industry, commerce and the general public, and in particular shall make proper provision for meeting out of their receipts on revenue account all expenditure to which such receipts are applicable under the provisions of this Part of this Act.

Directions
and
principles to
be observed
by Railway
Authority.

(2) In the discharge of their said functions the Authority shall be guided by such instructions on questions of policy as may be given to them by the Federal Government.

If any dispute arises under this subsection between the Federal Government and the Authority as to whether a question is or is not a question of policy, the decision of the Governor General in his discretion shall be final.

PART VIII.

THE FEDERAL RAILWAY AUTHORITY.

Executive
authority in
respect of
railways to
be exercised
by Federal
Railway
Authority.

181.—(1) The executive authority of the Federation in respect of the regulation and the construction, maintenance and operation of railways shall be exercised by a Federal Railway Authority (hereinafter referred to as "the Authority").

(2) The said executive authority extends to the carrying on in connection with any Federal railways of such undertakings as, in the opinion of the Authority, it is expedient should be carried on in connection therewith and to the making and carrying into effect of arrangements with other persons for the carrying on by those persons of such undertakings :

Provided that, as respects their powers under this subsection, the Authority shall be subject to any relevant provisions of any Federal, Provincial or existing Indian law, and to the relevant provisions of the law of any Federated State, but nothing in this subsection shall be construed as limiting the provisions of Part VI of this Act regulating the relations of the Federation with Provinces and States.

(3) Notwithstanding anything in this section, the Federal Government or its officers shall perform in regard to the construction, equipment, and operation of railways such functions for securing the safety both of members of the public and of persons operating the railways, including the holding of inquiries into the causes of accidents, as in the opinion of the Federal Government should be performed by persons independent of the Authority and of any railway administration.

So much of Part X of this Act as provides that powers in relation to railway services of the Federation shall be exercised by the Authority shall not apply in relation to officers of the Federal Government employed in the performance of any of the functions mentioned in this subsection.

182.—(1) Not less than three-sevenths of the members of the Authority shall be persons appointed by the Governor-General in his discretion, and the Governor-General shall in his discretion appoint a member of the Authority to be the President thereof.

Composition
&c., of
Railway
Authority.

(2) Subject as aforesaid, the provisions of the English Schedule to this Act, as supplemented or amended by any Act of the Federal Legislature for the time being in force, shall have effect with respect to the appointment, qualifications and conditions of service of members of the Authority, and with respect to the Authority's proceedings, executive staff and liability to income-tax :

Provided that, except with the previous sanction of the Governor-General in his discretion, there shall not be introduced into, or moved in, either Chamber of the Federal Legislature any Bill or any amendment for supplementing or amending the provisions of the said Schedule.

183.—(1) The Authority in discharging their functions under this Act shall act on business principles, due regard being had by them to the interests of agriculture, industry, commerce and the general public, and in particular shall make proper provision for meeting out of their receipts on revenue account all expenditure to which such receipts are applicable under the provisions of this Part of this Act.

Directions
and
principles to
be observed
by Railway
Authority.

(2) In the discharge of their said functions the Authority shall be guided by such instructions on questions of policy as may be given to them by the Federal Government.

If any dispute arises under this subsection between the Federal Government and the Authority as to whether a question is or is not a question of policy, the decision of the Governor General in his discretion shall be final.

(3) The provisions of subsection (1) of this section shall apply in relation to the discharge by the Federal Government of their functions with respect to railways as they apply in relation to the functions of the Authority, but nothing in this subsection shall be construed as limiting the powers of the Governor-General under the next succeeding subsection.

(4) The provisions of this Act relating to the special responsibilities of the Governor-General, and to his duty as regards certain matters to exercise his functions in his discretion or to exercise his individual judgment, shall apply as regards matters entrusted to the Authority as if the executive authority of the Federation in regard to those matters were vested in him; and as if the functions of the Authority as regards those matters were the functions of ministers, and the Governor-General may issue to the Authority such directions as he may deem necessary as regards any matter which appears to him to involve any of his special responsibilities, or as regards which he is by or under this Act required to act in his discretion or to exercise his individual judgment, and the Authority shall give effect to any directions so issued to them.

Conduct of
business
between
Railway
Authority
and Federal
Government

184.—(1) The Governor-General exercising his individual judgment, but after consultation with the Authority, may make rules for the more convenient transaction of business arising out of the relations between the Federal Government and the Authority.

(2) The rules shall include provisions requiring the Authority to transmit to the Federal Government all such information with respect to their business as may be specified in the rules, or as the Governor-General may otherwise require to be so transmitted, and in particular provisions requiring the Authority and their chief executive officer to bring to the notice of the Governor-General any matter under consideration by the Authority or by that officer which involves, or appears to them or him likely to

involve, any special responsibility of the Governor-General.

185.—(1) Except in such classes of case as may be specified in regulations to be made by the Federal Government, the Authority shall not acquire or dispose of any land, and, when it is necessary for the Authority to acquire compulsorily any land for the purposes of their functions, the Federal Government shall cause that land to be acquired on their behalf and at their expense.

(2) Contracts made by or on behalf of the Authority shall be enforceable by or against the Authority and not by or against the Federation, and, subject to any provision which may hereafter be made by Act of the Federal Legislature, the Authority may sue and be sued in the like manner and in the like cases as a company operating a railway may sue and be sued :

Acquisition
and sale of
land, con-
tracts and
working
agreements

Provided that this subsection does not apply in relation to any contract declared by its terms to be supplemental to a contract made before the establishment of the Authority, and any such supplemental contract may be enforced in any manner in which the principal contract may be enforced.

(3) The Authority may make working agreements with, and carry out working agreements made with, any Indian State or person owning or operating any railway in India, or in territories adjacent to India, with respect to the persons by whom and the terms on which any of the railways with which the parties are respectively concerned shall be operated.

186.—(1) The Authority shall establish, maintain and control a fund (which shall be known as the "Railway Fund") and all moneys received by the Authority, whether on revenue account or on capital account, in the discharge of their functions and all moneys provided, whether on revenue account or on capital account, out of the revenues of the Federation to enable them to discharge these

Finance of
the Railway
Authority.

functions shall be paid into that Fund, and all expenditure, whether on revenue account or on capital account, required for the discharge of their functions shall be defrayed out of that Fund :

Provided that nothing in this subsection shall prevent the Authority from establishing and maintaining separate provident funds for the benefit of persons who are or have been employed in connection with railways.

(2) The receipts of the Authority on revenue account in any financial year shall be applied in—

- (a) defraying working expenses ;
- (b) meeting payments due under contracts or agreements to railway undertakings ;
- (c) paying pensions, and contributions to provident funds ;
- (d) repaying to the revenues of the Federation so much of any pensions and contributions to provident funds charged by this Act on those revenues as is attributable to service on railways in India ;
- (e) making due provision for maintenance, renewals, improvements and depreciation ;
- (f) making to the revenues of the Federation any payments by way of interest which they are required by this Part of this Act to make ; and
- (g) defraying other expenses properly chargeable against revenue in that year.

(3) Any surpluses on revenue account shown in the accounts of the Authority shall be apportioned between the Federation and the Authority in accordance with a scheme to be prepared, and from time to time reviewed, by the Federal Government, or, until such a scheme has been prepared, in accordance with the principles which immediately before the establishment

of the Authority regulated the application of surpluses in railway accounts, and any sum apportioned to the Federation under this subsection shall be transferred accordingly and shall form part of the revenues of the Federation.

(4) The Federation may provide any moneys, whether on revenue account or capital account, for the purposes of the Railway Authority, but, where any moneys are so provided, the provision thereof shall be deemed to be expenditure and shall accordingly be shown as such in the estimates of expenditure laid before the Chambers of the Legislature.

187.—(1) There shall be deemed to be owing from the Authority to the Federation such sum as may be agreed or, in default of agreement, determined by the Governor-General in his discretion, to be equivalent to the amount of the moneys provided, whether before or after the passing of this Act, out of the revenues of India or of the Federation for capital purposes in connection with railways in India (exclusive of Burma) and the Authority shall out of their receipts on revenue account pay to the Federation interest on that amount at such rate as may be so agreed or determined, and also make payments in reduction of the principal of that amount in accordance with a repayment scheme so agreed or determined.

Provisions
as to certain
obligations
of the
Railway
Authority.

For the purposes of this subsection, where the Secretary of State in Council has assumed or incurred any obligation in connection with any such railways, he shall be deemed to have provided for the said purposes an amount equal to the capital value of that obligation as shown in the accounts of the Government of India immediately before the establishment of the Authority.

Nothing in this subsection shall be construed as preventing the Authority from making payments to the Federation in reduction of the principal of any such amount as aforesaid out of moneys other than receipts on revenue account.

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(2) It shall be an obligation of the Authority to repay to the Federation any sums defrayed out of the revenues of the Federation in respect of any debt, damages, costs, or expenses in, or in connection with, any proceedings brought or continued by or against the Federation or against the Secretary of State under Part VII of this Act in respect of railways in India.

(3) It shall be an obligation of the Authority to pay to any Province or Indian State such sums as may be equivalent to the expenses incurred by that Province or State in the provision of police required for the maintenance of order on Federal railway premises, and any question which may arise between the Authority and a Province or State as to the amount of any expenses so incurred shall be determined by the Governor-General in his discretion.

Investment
of funds of
Railway
Authority.

188. Subject to such conditions, if any, as may be prescribed by the Federal Government, the Authority may from time to time invest any moneys in the railway fund or any provident fund which are not for the time being required to meet expenses properly defrayable out of that fund, and may, subject as aforesaid, from time to time transfer and realise investments made by them.

Special
provisions
as to certain
existing
funds.

189.—(1) Nothing in the foregoing provisions of this Part of this Act shall be construed as entitling the Authority to require that any moneys which immediately before the establishment of the Authority were held by the Governor-General in Council on account of any railway depreciation fund, reserve fund or provident fund shall be transferred to the Authority for investment by them, but the Authority may from time to time require the transfer to themselves of so much of any such fund as they require to defray expenditure chargeable against that fund, and the Federal Government shall credit each such fund with interest on the untransferred balance thereof at such rate as may be agreed, or, in default of agreement, determined by the Governor-General in his discretion.

(2) In this section references to any such fund as aforesaid shall be construed as references to so much of that fund as is not attributable to the railways of Burma.

190.—(1) The accounts of the receipts and expenditure of the Authority shall be audited and certified by, or on behalf of, the Auditor-General of India. Audit and annual reports.

(2) The Authority shall publish annually a report of their operations during the preceding year and a statement of accounts in a form approved by the Auditor-General.

191. The Governor-General may from time to time appoint a Railway Rates Committee to give advice to the Authority in connection with any dispute between persons using, or desiring to use, a railway and the Authority as to rates or traffic facilities which he may require the Authority to refer to the committee. Railway Rates Committee.

192. A Bill or Amendment making provision for regulating the rates or fares to be charged on any railway shall not be introduced or moved in either Chamber of the Federal Legislature except on the recommendation of the Governor-General. Bills and amendments for regulating rates and fares to require recommendation of Governor-General.

193.—(1) It shall be the duty of the Authority and every Federated State so to exercise their powers in relation to the railways with which they are respectively concerned as to afford all reasonable facilities for the receiving, forwarding, and delivering of traffic upon and from those railways, including the receiving, forwarding, and delivering of through traffic at through rates, and as to secure that there shall be between one railway system and another no unfair discrimination, by the granting of undue preferences or otherwise, and no unfair or uneconomic competition. Obligation of railway Authority and Federated States to afford mutual traffic facilities and to avoid unfair discrimination, etc.

(2) Any complaint by the Authority against a Federated State or by a Federated State against the Authority on the ground that the provisions of the preceding subsection have not been complied with shall be made to and determined by the Railway Tribunal.

Appeal by
State to
Railway
Tribunal
from certain
directions of
Railway
Authority.

Con-
struction
and recon-
struction of
railways.

194. If the Authority, in the exercise of any executive authority of the Federation in relation to interchange of traffic, or maximum or minimum rates and fares, or station or service terminal charges, give any direction to a Federated State, the State may complain that the direction discriminates unfairly against the railways of the State, or imposes on the State an obligation to afford facilities which are not in the circumstances reasonable, and any such complaint shall be determined by the Railway Tribunal.

195.—(1) The Governor-General acting in his discretion shall make rules requiring the Authority and any Federated State to give notice in such cases as the rules may prescribe of any proposal for constructing a railway or for altering the alignment or gauge of a railway, and to deposit plans.

(2) The rules so made shall contain provisions enabling objections to be lodged by the Authority or by a Federated State on the ground that the carrying out of the proposal will result in unfair or uneconomic competition with a Federal railway or a State railway, as the case may be, and, if an objection so lodged is not withdrawn within the prescribed time, the Governor-General shall refer to the Railway Tribunal the question whether the proposal ought to be carried into effect, either without modification or with such modification as the Tribunal may approve, and the proposal shall not be proceeded with save in accordance with the decision of the Tribunal.

(3) This section shall not apply in any case where the Governor-General in his discretion certifies that for reasons connected with defence effect should, or should not, be given to a proposal.

NOTES.

Disputes between Railway Authority and Indian States Railways.—

The Joint Select Committee pointed out that :

"We attach special importance to the arbitration procedure mentioned above as a means of settling disputes on administrative issues between the Railway Authority and the Administrations of railways owned and worked by an Indian State. The Constitution Act should contain

adequate provision to ensure reasonable facilities for the State's railway traffic and to protect its system against unfair or uneconomic competition or discrimination in the Federal Legislature. We consider that States owning and working a considerable railway system should be able to look to the arbitration machinery which we recommend for adequate protection in such matters. On the other hand, if any State is allowed to reserve, as a condition of accession, the right to construct railways in its territory notwithstanding Item (9) of the revised exclusive Federal List, its right to do so should be subject to appeal by the Railway Authority to the same tribunal."¹⁴

196.—(1) There shall be a Tribunal (in this Act referred to as "the Railway Tribunal") consisting of a President and two other persons to be selected to act in each case by the Governor-General in his discretion from a panel of eight persons appointed by him in his discretion, being persons with railway, administrative, or business experience. Railway
Tribunal.

(2) The President shall be such one of the judges of the Federal Court as may be appointed for the purpose by the Governor-General in his discretion after consultation with the Chief Justice of India and shall hold office for such period of not less than five years as may be specified in the appointment, and shall be eligible for re-appointment for a further period of five years or any less period :

Provided that, if the President ceases to be a judge of the Federal Court, he shall thereupon cease to be President of the Tribunal and, if he is for any reason temporarily unable to act, the Governor-General in his discretion may after the like consultation appoint another judge of the Federal Court to act for the time being in his place.

(3) It shall be the duty of the Railway Tribunal to exercise such jurisdiction as is conferred on it by this Act, and for that purpose the Tribunal may make such orders, including interim orders, orders varying or discharging a direction or order of the

14. Para. 395, page 231, J.C. Report.

Authority, orders for the payment of compensation or damages and of costs and orders for the production of documents and the attendance of witnesses, as the circumstances of the case may require, and it shall be the duty of the Authority, and of every Federated State and of every other person or authority affected thereby to give effect to any such order.

(4) An appeal shall lie to the Federal Court from any decision of the Railway Tribunal on a question of law, but no appeal shall lie from the decision of the Federal Court on any such appeal.

(5) The Railway Tribunal or the Federal Court, as the case may be, may, on application made for the purpose, if satisfied that in view of an alteration in the circumstances it is proper so to do, vary or revoke any previous order made by it.

(6) The President of the Railway Tribunal may, with the approval of the Governor-General in his discretion, make rules regulating the practice and procedure of the Tribunal and the fees to be taken in proceedings before it.

(7) Subject to the provisions of this section relating to appeals to the Federal Court, no court shall have any jurisdiction with respect to any matter with respect to which the Railway Tribunal has jurisdiction.

(8) There shall be paid out of the revenues of the Federation to the members of the Railway Tribunal other than the President such remuneration as may be determined by the Governor-General in his discretion, and the administrative expenses of the Railway Tribunal, including any such remuneration as aforesaid, shall be charged on the revenues of the Federation, and any fees or other moneys taken by the Tribunal shall form part of those revenues.

The Governor-General shall exercise his individual judgment as to the amount to be included in respect of the administrative ex-

penses of the Railway Tribunal in any estimates of expenditure laid by him before the Chambers of the Federal Legislature.

197.—(1) Without prejudice to the general provisions of this Act with respect to rights and liabilities under contracts made by or on behalf of the Secretary of State in Council, the provisions of this section shall have effect with respect to any contract so made with a railway company which immediately before the commencement of Part III of this Act was operating a railway in British India.

Rights of
railway
companies
in respect of
arbitration
under
contracts.

(2) If a dispute arises under any such contract between the railway company concerned and either the Authority or the Federal Government, and if the matter in dispute is of such a nature that under the contract the company might require, or, but for some provision of this Act, might have required, it to be submitted to arbitration, the dispute shall be deemed to have arisen between the company and the Secretary of State, and the provisions of the contract relating to the determination of such a dispute shall have effect with the substitution of the Secretary of State for the Secretary of State in Council.

Any award made in an arbitration under the foregoing provisions of this section and any settlement of the dispute agreed to by the Secretary of State with the concurrence of his advisers shall be binding on the Federal Government and the Authority, and any sum which the Secretary of State may become liable or may so agree to pay by way of debt, damage or costs, and any costs or expenses incurred by him in connection with the matter, shall be paid out of the revenues of the Federation and shall be charged on those revenues but shall be a debt due to the Federation from the Authority.

198. If and in so far as His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States may entrust to the Authority the performance of any functions in relation to railways in an Indian State which is

Railways in
Indian
States
which have
not
federated.

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not a Federated State, the Authority shall undertake the performance of those functions.

Official
directors of
Indian
railway
companies.

199. Any powers of the Secretary of State in Council with respect to the appointment of directors and deputy directors of Indian railway companies shall be exercised by the Governor-General in his discretion after consultation with the Authority.

PART IX.

THE JUDICATURE.

CHAPTER I.

THE FEDERAL COURT.

Establish-
ment and
constitution
of Federal
Court.

200.—(1) There shall be a Federal Court consisting of a Chief Justice of India and such number of other judges as His Majesty may deem necessary, but unless and until an address has been presented by the Federal Legislature to the Governor-General for submission to His Majesty praying for an increase in the number of judges, the number of puisne judges shall not exceed six.

(2) Every judge of the Federal Court shall be appointed by His Majesty by warrant under the Royal Sign Manual and shall hold office until he attains the age of sixty-five years :

Provided that—

- (a) a judge may by resignation under his hand addressed to the Governor-General resign his office ;
- (b) a judge may be removed from his office by His Majesty by warrant under the Royal Sign Manual on the ground of misbehaviour or of infirmity of mind or body, if the Judicial Committee of the Privy Council, on reference being made to them by His Majesty, report that the judge ought on any such ground to be removed.

(3) A person shall not be qualified for appointment as a judge of the Federal Court unless he—

- (a) has been for at least five years a judge of a High Court in British India or in a Federated State; or
- (b) is a barrister of England or Northern Ireland of at least ten years standing, or a member of the Faculty of Advocates in Scotland of at least ten years standing; or
- (c) has been for at least ten years a pleader of a High Court in British India or in a Federated State or of two or more such Courts in succession :

Provided that—

- (i) a person shall not be qualified for appointment as Chief Justice of India unless he is, or when first appointed to judicial office was, a barrister, a member of the Faculty of Advocates or a pleader; and
- (ii) in relation to the Chief Justice of India, for the references in paragraphs (b) and (c) of this subsection to ten years there shall be substituted references to fifteen years.

In computing for the purposes of this subsection the standing of a barrister or a member of the Faculty of Advocates, or the period during which a person has been a pleader, any period during which a person has held judicial office after he became a barrister, a member of the Faculty of Advocates or a pleader, as the case may be, shall be included.

(4) Every person appointed to be a judge of the Federal Court shall, before he enters upon his office, make and subscribe before the Governor-General or some person appointed by him an oath according to the form set out in that behalf in the Fourth Schedule to this Act.

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Salaries,
&c., of
judges.

201. The judges of the Federal Court shall be entitled to such salaries and allowances, including allowances for expenses in respect of equipment and travelling upon appointment, and to such rights in respect of leave and pensions, as may from time to time be fixed by His Majesty in Council :

Provided that neither the salary of a judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment.

Temporary
appoint-
ment of
acting
Chief
Justice.

202. If the office of Chief Justice of India becomes vacant, or if the Chief Justice is, by reason of absence or for any other reason, unable to perform the duties of his office, those duties shall, until some person appointed by His Majesty to the vacant office has entered on the duties thereof, or until the Chief Justice has resumed his duties, as the case may be, be performed by such one of the other judges of the court as the Governor-General may in his discretion appoint for the purpose.

Seat of
Federal
Court.

203. The Federal Court shall be a court of record and shall sit in Delhi and at such other place or places, if any, as the Chief Justice of India may, with the approval of the Governor-General, from time to time appoint.

Original
jurisdiction
of Federal
Court.

204.—(1) Subject to the provisions of this Act, the Federal Court shall, to the exclusion of any other court, have an original jurisdiction in any dispute between any two or more of the following parties, that is to say, the Federation, any of the Provinces or any of the Federated States, if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends :

Provided that the said jurisdiction shall not extend to—

(a) a dispute to which a State is a party, unless the dispute—

(i) concerns the interpretation of this Act or of an

Order in Council made thereunder, or the extent of the legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of that State; or

(ii) arises under an agreement made under Part VI of this Act in relation to the administration in that State of a law of the Federal Legislature, or otherwise concerns some matter with respect to which the Federal Legislature has power to make laws for that State; or

(iii) arises under an agreement made after the establishment of the Federation, with the approval of His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States, between that State and the Federation or a Province, being an agreement which expressly provides that the said jurisdiction shall extend to such a dispute;

(b) a dispute arising under any agreement which expressly provides that the said jurisdiction shall not extend to such a dispute.

(2) The Federal Court in the exercise of its original jurisdiction shall not pronounce any judgment other than a declaratory judgment.

NOTES.

Federal Court.—

The system of Federation clearly demanded the creation of a Federal Court which would have jurisdiction over the States as well as the provinces. The Act, therefore provides for the Constitution of a Federal Court to consist of a Chief Justice of India and such puisne Judges, as his Majesty thinks necessary, the number not to exceed six until an address is presented by the legislature for an increase.¹⁵

15. Keath, Constitutional History of India, 1600—1935, pages 419—420,

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The Federal Court came into being from October, 1937. Sir Maurice Gwyer, K.C.B., K.C. S.I., K.C., has been appointed as the First Chief Justice of India, with Sir Muhomad Sulaiman, Chief Justice of Allahabad High Court, and Mr. M. R. Jayakar, Barrister-at-law, Advocate Bombay High Court, as puisne Judges.

Appellate
jurisdiction
of Federal
Court in
appeals
from High
Courts in
British
India.

205.—(1) An appeal shall lie to the Federal Court from any judgment, decree or final order of a High Court in British India, if the High Court certifies that the case involves a substantial question of law as to the interpretation of this Act or any Order in Council made thereunder, and it shall be the duty of every High Court in British India to consider in every case whether or not any such question is involved and of its own motion to give or to withhold a certificate accordingly.

(2) Where such a certificate is given, any party in the case may appeal to the Federal Court on the ground that any such question as aforesaid has been wrongly decided and on any ground on which that party could have appealed without special leave to His Majesty in Council if no such certificate had been given, and, with the leave of the Federal Court, on any other ground, and no direct appeal shall lie to His Majesty in Council, either with or without special leave.

Power of
Federal
Legislature
to enlarge
appellate
jurisdiction.

206.—(1) The Federal Legislature may by Act provide that in such civil cases as may be specified in the Act an appeal shall lie to the Federal Court from a judgment, decree or final order of a High Court in British India without any such certificate as aforesaid, but no appeal shall lie under any such Act unless—

- (a) the amount or value of the subject matter of the dispute in the court of first instance and still in dispute on appeal was and is not less than fifty thousand rupees or such other sum not less than fifteen thousand rupees as may be specified by the Act, or the judgment, decree or final order involves directly or indirectly some claim or question respecting property of the like

amount or value; or

(b) the Federal Court gives special leave to appeal.

(2) If the Federal Legislature makes such provision as is mentioned in the last preceding subsection, consequential provision may also be made by Act of the Federal Legislature for the abolition in whole or in part of direct appeals in civil cases from High Courts in British India to His Majesty in Council, either with or without special leave.

(3) A Bill or amendment for any of the purposes specified in this section shall not be introduced into, or moved in, either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion.

207.—(1) An appeal shall lie to the Federal Court from a High Court in a Federal State on the ground that a question of law has been wrongly decided, being a question which concerns the interpretation of this Act or of an Order in Council made thereunder or the extent of the legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of that State, or arises under an agreement made under Part VI of this Act in relation to the administration in that State of a law of the Federal Legislature.

Appellate jurisdiction of Federal Court in appeals from High Courts in Federated States.

(2) An appeal under this section shall be by way of special case to be stated for the opinion of the Federal Court by the High Court, and the Federal Court may require a case to be so stated, and may return any case so stated in order that further facts may be stated therein.

NOTES.

Letters of Request—

The Rulers insisted upon the method of Letters of Request firstly because of the dignity attached to them as sovereigns, and secondly because they did not like an outside tribunal to have direct relations with their own Courts.

The Parliamentary Joint Select Committee while discussing this matter observed as follows:—

“It was urged before us that to permit a litigant

in a State Court to apply to the Federal Court for leave to appeal, if the State Court had already refused leave, would be to derogate from the sovereignty of the Ruler of the State, and that the refusal of a State Court to grant leave to appeal, at any rate in a case concerning the interpretation of Federal laws, should be treated as final. We should much regret the inclusion of a provision of this kind. The appellate jurisdiction of the Federal Court, so far as regards an Indian State, arises from the voluntary act of the Ruler himself, *viz.*, his accession to the Federation; the jurisdiction is in no sense imposed on him *ab extra*. This being so, and since it is proposed that all appeals to the Federal Court should be in the form of a Special Case to be stated by the Court appealed from,, we think the position of the States would be appropriately safeguarded if it were provided that the granting of leave to appeal by the Federal Court were in the form of Letters of Request, directed to the Ruler of the State to be transmitted by him to the Court concerned."¹⁶

Appeals to
His Majesty
in Council.

208.— An appeal may be brought to His Majesty in Council from a decision of the Federal Court—

(a) from any judgment of the Federal Court given in the exercise of its original jurisdiction in any dispute which concerns the interpretation of this Act or of an Order in Council made thereunder, or the extent of the legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of any State, or arises under an agreement made under Part VI of this Act in relation to the administration in any State of a law of the Federal Legislature, without leave; and

(b) in any other case, by leave of the Federal Court or of His Majesty in Council.

NOTES.

Leave to appeal to Privy Council.—

It may be assumed that in granting special leave the Privy Council will act on its usual principle and grant leave mainly where some important question of law or matter of public interest is involved.¹⁷

The principles upon which the Judicial Committee have acted in granting special leave to appeal from the Supreme Court of the Dominion of Canada were stated thus in *Prince v. Gagnon*:—¹⁸

16. Para. 325, J.C. Report.

17. *Prince v. Gagnon* (1882) 8 App. Cas. 103.

18. (1882), 8 App. Cas. 103.

“Their Lordships are not prepared to advise Her Majesty to exercise her prerogative by admitting an appeal to Her Majesty in Council from the Supreme Court of the Dominion, save where the case is of gravity involving matters of public interest or some important question of law, or affecting property of considerable amount or where the case is otherwise of some public importance or of a very substantial character.”

“We may perhaps point out,” said the Joint Select Committee in their Report, “that the jurisdiction of the Privy Council in relation to the States will be based upon the voluntary act of Rulers themselves, *i.e.* their Instruments of Accession.”

209.—(1) The Federal Court shall, where it allows an appeal, remit the case to the court from which the appeal was brought with a declaration as to the judgment, decree or order which is to be substituted for the judgment, decree or order appealed against, and the court from which the appeal was brought shall give effect to the decision of the Federal Court.

Form of
judgment
on appeal.

(2) Where the Federal Court upon any appeal makes any order as to the costs of the proceedings in the Federal Court, it shall, as soon as the amount of the costs to be paid is ascertained, transmit its order for the payment of that sum to the court from which the appeal was brought and that court shall give effect to the order.

(3) The Federal Court may, subject to such terms or conditions as it may think fit to impose, order a stay of execution in any case under appeal to the Court, pending the hearing of the appeal, and execution shall be stayed accordingly.

210.—(1) All authorities, civil and judicial, throughout the Federation, shall act in aid of the Federal Court.

Enforce-
ment of
decrees and
orders of
Federal
Court and
orders as to
discovery,
&c.

(2) The Federal Court shall, as respects British India and the Federated States, have power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of court, which any High Court in British India has power to make as respects the territory within its jurisdiction,

Part
III (B)
Ss. 211—
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and any such orders, and any orders of the Federal Court as to the costs of and incidental to any proceedings therein, shall be enforceable by all courts and authorities in every part of British India or of any Federated State as if they were orders duly made by the highest court exercising civil or criminal jurisdiction, as the case may be, in that part.

(3) Nothing in this section—

(a) shall apply to any such order with respect to costs as is mentioned in subsection (2) of the last preceding section; or

(b) shall, as regards a Federated State, apply in relation to any jurisdiction exercisable by the Federal Court by reason only of the making by the Federal Legislature of such provision as is mentioned in this chapter for enlarging the appellate jurisdiction of the Federal Court.

Letters of request to Federated States.

211. Where in any case the Federal Court require a special case to be stated or re-stated by, or remit a case to, or order a stay of execution in a case from, a High Court in a Federated State, or require the aid of the civil or judicial authorities in a Federated State, the Federal Court shall cause letters of request in that behalf to be sent to the Ruler of the State, and the Ruler shall cause such communication to be made to the High Court or to any judicial or civil authority as the circumstances may require.

Law declared by Federal Court and Privy Council to be binding on all courts.

212. The law declared by the Federal Court and by any judgment of the Privy Council shall, so far as applicable, be recognised as binding on, and shall be followed by, all courts in British India, and, so far as respects the application and interpretation of this Act or any Order in Council thereunder or any matter with respect to which the Federal Legislature has power to make laws in relation to the State, in any Federated State.

NOTES.

But it is not understood what judicial means would be available to the Federal Court to prevent its rulings being ignored or misapplied in the Courts of a Federated State.

213.—(1) If at any time it appears to the Governor-General that a question of law has arisen, or is likely to arise which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Federal Court upon it, he may in his discretion refer the question to that court for consideration, and the court may, after such hearing as they think fit, report to the Governor-General thereon.

Powers of Governor-General to consult Federal Court.

(2) No report shall be made under this section save in accordance with an opinion delivered in open court with the concurrence of a majority of the judges present at the hearing of the case, but nothing in this subsection shall be deemed to prevent a judge who does not concur from delivering a dissenting opinion.

NOTES.

Scope.—

This provision has perhaps been taken from section 4 of the Judicial Committee Act 1833, which provides that His Majesty may refer to the Committee for hearing or consideration any matters whatsoever as His Majesty may think fit, and that the Committee may thereupon hear and consider the same, and shall advise His Majesty thereon.

214.—(1) The Federal Court may from time to time, with the approval of the Governor-General in his discretion, make rules of court for regulating generally the practice and procedure of the court, including rules as to the persons practising before the court, as to the time within which appeals to the court are to be entered, as to the costs of and incidental to any proceedings in the court, and as to the fees to be charged in respect of proceedings therein, and in particular may make rules providing for the summary determination of any appeal which appears to the court to be frivolous or vexatious or brought for the purpose of delay.

Rules of Court, &c.

Part
III (B)
Ss. 215—
216

(2) Rules made under this section may fix the minimum number of judges who are to sit for any purpose, so, however, that no case shall be decided by less than three judges :

Provided that, if the Federal Legislature makes such provision as is mentioned in this chapter for enlarging the appellate jurisdiction of the court, the rules shall provide for the constitution of a special division of the court for the purpose of deciding all cases which would have been within the jurisdiction of the court even if its jurisdiction had not been so enlarged.

(3) Subject to the provisions of any rules of court, the Chief Justice of India shall determine what judges are to constitute any division of the court and what judges are to sit for any purpose.

(4) No judgment shall be delivered by the Federal Court save in open court and with the concurrence of a majority of the judges present at the hearing of the case, but nothing in this subsection shall be deemed to prevent a judge who does not concur from delivering a dissenting judgment.

(5) All proceedings in the Federal Court shall be in the English language.

Ancillary
powers of
Federal
Court.

215. The Federal Legislature may make provision by Act for conferring upon the Federal Court such supplemental powers not inconsistent with any of the provisions of this Act as may appear to be necessary or desirable for the purpose of enabling the court more effectively to exercise the jurisdiction conferred upon it by or under this Act.

Expenses of
Federal
Court.

216.—(1) The administrative expenses of the Federal Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the court, shall be charged upon the revenues of the Federation, and fees or other moneys taken by the court shall form part of those revenues,

(2) The Governor-General shall exercise his individual judgment as to the amount to be included in respect of the administrative expenses of the Federal Court in any estimates of expenditure laid by him before the Chambers of the Federal Legislature.

217. References in any provision of this Part of this Act to a High Court in a Federated State shall be construed as references to any court which His Majesty may, after communication with the Ruler of the State, declare to be a High Court for the purposes of that provision. Construction of references to High Courts in States.

218. Nothing in this chapter shall be construed as conferring, or empowering the Federal Legislature to confer, any right of appeal to the Federal Court in any case in which a High Court in British India is exercising jurisdiction on appeal from a court outside British India, or as affecting any right of appeal in any such case to His Majesty in Council with or without leave. Savings.

Miscellaneous.

262.—(1) The Ruler or a subject of a Federated State shall be eligible to hold any civil office under the Crown in India in connection with the affairs of the Federation, and the Governor-General may declare that the Ruler or any subject of a specified Indian State which is not a Federated State, or any native of a specified tribal area or territory adjacent to India, shall be eligible to hold any such office, being an office specified in the declaration. Eligibility for office of persons who are not British subjects.

(2) The Governor of a Province may declare that the Ruler or any subject of a specified Indian State, or any native of a specified tribal area or territory adjacent to India, shall be eligible to hold any civil office in connection with the affairs of the Province, being an office specified in the declaration.

(3) The Secretary of State may declare that any named subject of an Indian State, or any named native of a tribal area or territory adjacent to India, shall be eligible for appointment by

him to any civil service under the Crown in India to which he makes appointments, and any person who, having been so declared eligible, is appointed to such a service, shall be eligible to hold any civil office under the Crown in India.

(4) Subject as aforesaid and to any other express provisions of this Act, no person who is not a British subject shall be eligible to hold any office under the Crown in India :

Provided that the Governor-General or, in relation to a Province, the Governor may authorise the temporary employment for any purpose of a person who is not a British subject.

(5) In the discharge of his functions under this section the Governor-General or the Governor of a Province shall exercise his individual judgment.

PART XII.

MISCELLANEOUS AND GENERAL.

The Crown and the Indian States.

Savings for
rights and
obligations
of the
Crown in its
relations
with Indian
States.

285. Subject in the case of a Federated State to the provisions of the Instrument of Accession of that State, nothing in this Act affects the rights and obligations of the Crown in relation to any Indian State.

NOTES.

Scope.—

The Joint Select Committee pointed out that :—

“The Constitution Act cannot itself make any Indian State a member of the Federation; it will only prescribe a method whereby the State may accede and the legal consequences which will flow from the accession. There can be no question of compulsion so far as the States are concerned. Their Rulers can enter or stand aside from the Federation as they think fit. They have announced their willingness to consider federation with the Provinces of British India on certain terms; but, whereas the powers of the new Central Government in relation to the Provinces will cover a wide field and will be identical in the case of each Province, the Princes have intimated that they are not prepared to agree to the exercise by a

Federal Government for the purpose of the Federation of an identical range of powers in relation to themselves."¹⁹

"It is proposed that the Ruler of a State shall signify to the Crown his willingness to accede to the Federation by executing an Instrument of Accession; and this Instrument (whatever form it may take) will, we assume, enable the powers and jurisdiction of the Ruler, in respect of those matters which he has agreed to recognise as Federal subjects, to be exercised by the Federal authorities brought into existence by the Constitution Act; that is to say, the Governor-General, the Federal Legislature, and the Federal Court, but strictly within the limits defined by the Instrument of Accession."²⁰

286.—(1) If His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States requests the assistance of armed forces for the due discharge of those functions, it shall be the duty of the Governor-General in the exercise of the executive authority of the Federation to cause the necessary forces to be employed accordingly, but the net additional expense, if any, incurred in connection with those forces by reason of that employment shall be deemed to be expenses of His Majesty incurred in discharging the said functions of the Crown.

Use of His Majesty's forces in connection with discharge of the functions of the Crown in its relations with Indian States.

(2) In discharging his functions under this section the Governor-General shall act in his discretion.

287. Arrangements may be made between His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States and the Governor of any Province for the discharge by the Governor and officers serving in connection with the affairs of the Province of powers and duties in connection with the exercise of the said functions of the Crown.

Arrangements for Governors and Provincial staff to assist in discharging functions of Political Department.

294.—(1) Neither the executive authority of the Federation nor the legislative power of the Federal Legislature shall extend to any area in a Federated State which His Majesty in signifying his acceptance of the Instrument of Accession of that State may

Foreign jurisdiction.

19. Para 154, page 86, J.C. Report.

20. Para 155, page 86, J.C. Report.

declare to be an area theretofore administered by or on behalf of His Majesty to which it is expedient that the provisions of this subsection should apply, and references in this Act to a Federated State shall not be construed as including references to any such area :

Provided that—

- (a) a declaration shall not be made under this subsection with respect to any area unless, before the execution by the Ruler of the Instrument of Accession, notice has been given to him of His Majesty's intention to make that declaration ;
- (b) if His Majesty with the assent of the Ruler of the State relinquishes his powers and jurisdiction in relation to any such area or any part of any such area, the foregoing provisions of this subsection shall cease to apply to that area or part, and the executive authority of the Federation and the legislative power of the Federal Legislature shall extend thereto in respect of such matters and subject to such limitations as may be specified in a supplementary Instrument of Accession for the State.

Nothing in this subsection applies to any area if it appears to His Majesty that jurisdiction to administer the area was granted to him solely in connection with a railway.

(2) Subject as aforesaid and to the following provisions of this section, if, after the accession of a State becomes effective, power or jurisdiction therein with respect to any matter is, by virtue of the Instrument of Accession of the State, exercisable, either generally or subject to limits, by the Federation, the Federal Legislature, the Federal Court, the Federal Railway Authority, or a Court or an authority exercising the power or jurisdiction by virtue of an Act of the Federal Legislature, or is, by virtue of an agreement made under Part VI of this Act in relation

to the administration of a law of the Federal Legislature, exercisable, either generally or subject to limits, by the Ruler or his officers, then any power or jurisdiction formerly exercisable on His Majesty's behalf in that State, whether by virtue of the Foreign Jurisdiction Act, 1890, or otherwise, shall not be exercisable in that State with respect to that matter or, as the case may be, with respect to that matter within those limits.

(3) So much of any law as by virtue of any power exercised by or on behalf of His Majesty to make laws in a State is in force in a Federated State immediately before the accession of the State becomes effective and might by virtue of the Instrument of Accession of the State be re-enacted for that State by the Federal Legislature, shall continue in force and be deemed for the purposes of this Act to be a Federal law so re-enacted :

Provided that any such law may be repealed or amended by Act of the Federal Legislature and unless continued in force by such an Act shall cease to have effect on the expiration of five years from the date when the accession of the State becomes effective.

(4) Subject as aforesaid, the powers and jurisdiction exercisable by or on behalf of His Majesty before the commencement of Part III of this Act in Indian States shall continue to be exercisable, and any Order in Council with respect to the said powers or jurisdiction made under the Foreign Jurisdiction Act, 1890, or otherwise, and all delegations, rules and orders made under any such Order, shall continue to be of full force and effect until the Order is amended or revoked by a subsequent Order :

Provided that nothing in this subsection shall be construed as prohibiting His Majesty from relinquishing any power or jurisdiction in any Indian State.

(5) An Order in Council made by virtue and in exercise of the powers by the Foreign Jurisdiction Act, 1890, or otherwise in His Majesty vested, empowering any person to make rules and

orders in respect of courts or administrative authorities acting for any territory shall not be invalid by reason only that it confers, or delegates powers to confer, on courts or administrative authorities power to sit or act outside the territory in respect of which they have jurisdiction or functions, or that it confers, or delegates power to confer, appellate jurisdiction or functions on courts or administrative authorities sitting or acting outside the territory.

(6) In the Foreign Jurisdiction Act, 1890, the expression "a British court in a foreign country" shall, in relation to any part of India outside British India, include any person, duly exercising on behalf of His Majesty any jurisdiction, civil or criminal, original or appellate, whether by virtue of an Order in Council or not, and for the purposes of section nine of that Act the Federal Court shall, as respects appellate jurisdiction in cases tried by a British Court in a Federated State, be deemed to be a Court held in a British Possession or under the authority of His Majesty.

(7) Nothing in this Act shall be construed as limiting any right of His Majesty to determine by what courts British subjects and subjects of foreign countries shall be tried in respect of offences committed in Indian States.

(8) Nothing in this section affects the provisions of this Act with respect to Berar.

295.—(1) Where any person has been sentenced to death in a Province, the Governor-General in his discretion shall have all such powers of suspension, remission or commutation of sentence as were vested in the Governor-General in Council immediately before the commencement of Part III of this Act, but save as aforesaid no authority in India outside a Province shall have any power to suspend, remit or commute the sentence of any person convicted in the Province:

Provided that nothing in this subsection affects any power

of any officer of His Majesty's forces to suspend, remit or commute a sentence passed by a court martial.

(2) Nothing in this Act shall derogate from the right of His Majesty, or of the Governor-General, if any such right is delegated to him by His Majesty, to grant pardons, reprieves, respites or remissions of punishment.

296.—(1) No member of the Federal or a Provincial Legislature shall be a member of any tribunal in British India having jurisdiction to entertain appeals or revise decisions in revenue cases.

Courts of
Appeal in
revenue
matters.

(2) If in any Province any such jurisdiction as aforesaid was, immediately before the commencement of Part III of this Act, vested in the Local Government, the Governor shall constitute a tribunal, consisting of such person or persons as he, exercising his individual judgment, may think fit, to exercise the same jurisdiction until other provision in that behalf is made by Act of the Provincial Legislature.

(3) There shall be paid to the members of any tribunal constituted under the last preceding subsection, such salaries and allowances as the Governor exercising his individual judgment may determine, and those salaries and allowances shall be charged on the revenues of the Province.

310.—(1) Whereas difficulties may arise in relation to the transition from the provisions of the Government of India Act to the provisions of this Act, and in relation to the transition from the provisions of Part II of this Act :

Power of
His Majesty
in Council
to remove
difficulties.

And whereas the nature of those difficulties, and of the provision which should be made for meeting them, cannot at the date of the passing of this Act be fully foreseen :

Now, therefore, for the purpose of facilitating each of the

said transitions His Majesty may by Order in Council—

- (a) direct that this Act and any provisions of the Government of India Act still in force shall, during such limited period as may be specified in the Order, have effect subject to such adaptations and modifications as may be so specified;
- (b) make, with respect to a limited period so specified such temporary provision as he thinks fit for ensuring that, while the transition is being effected and during the period immediately following it, there are available to all governments in India and Burma sufficient revenues to enable the business of those governments to be carried on; and
- (c) make such other temporary provisions for the purpose of removing any such difficulties as aforesaid as may be specified in the Order.

(2) No Order in Council in relation to the transition from the provisions of Part XIII of this Act to the provisions of Part II of this Act shall be made under this section after the expiration of six months from the establishment of the Federation, and no other Order in Council shall be made under this section after the expiration of six months from the commencement of Part III of this Act.

Interpretation.

Interpretation,
&c.

311.—(1) In this Act and, unless the context otherwise requires, in any other Act the following expressions have the meanings hereby respectively assigned to them, that is to say—

“British India” means all territories for the time being comprised within the Governors’ Provinces and the Chief Commissioners’ Provinces:

“India” means British India together with all territories

of any Indian Ruler under the suzerainty of His Majesty, all territories under the suzerainty of such an Indian Ruler, the tribal areas, and any other territories which His Majesty in Council may, from time to time, after ascertaining the views of the Federal Government and the Federal Legislature, declare to be part of India;

“Burma” includes (subject to the exercise by His Majesty of any powers vested in him with respect to the alteration of the boundaries thereof) all territories which were immediately before the commencement of Part III of this Act comprised in India, being territories lying to the east of Bengal, the State of Manipur, Assam, and any tribal areas connected with Assam; “British Burma” means so much of Burma as belongs to His Majesty;

“Tribal areas” means the areas along the frontiers of India or in Baluchistan which are not part of British India or of Burma or of any Indian State or of any foreign State;

“Indian State” includes any territory, whether described as a State, an Estate, a Jagir or otherwise, belonging to or under the suzerainty of a Ruler who is under the suzerainty of His Majesty and not being part of British India;

“Ruler” in relation to a State means the Prince, Chief or other person recognised by His Majesty as the Ruler of the State.

(2) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say :—

“agricultural income” means agricultural income as defined for the purposes of the enactments relating to Indian income tax;

“borrow” includes the raising of money by the grant of annuities and “loan” shall be construed accordingly;

“chief justice” includes in relation to a High Court a chief judge or judicial commissioner, and “judge” includes an additional judicial commissioner;

“corporation tax” means any tax on so much of the income of companies as does not represent agricultural income, being a tax to which the enactments requiring or authorising companies to make deductions in respect of income tax from payments of interest or dividends, or from other payments representing a distribution of profits, have no application;

“corresponding Province” means in case of doubt such Province as may be determined by His Majesty in Council to be the corresponding Province for the particular purpose in question;

“debt” includes any liability in respect of any obligation to repay capital sums by way of annuities and any liability under any guarantee, and “debt charges” shall be construed accordingly;

“existing Indian law” means any law, ordinance, order, byelaw, rule or regulation passed or made before the commencement of Part III of this Act by any legislature, authority or person in any territories for the time being comprised in British India, being a legislature, authority or person having power to make such a law, ordinance, order, byelaw, rule or regulation;

“goods” includes all materials, commodities, and articles;

“guarantee” includes any obligation undertaken before the commencement of Part III of this Act to make payments in the event of the profits of an undertaking falling short of a specified amount;

“High Court” does not, except where it is expressly so provided, include a High Court in a Federated State:

“Local Government” means any such Governor in Council, Governor acting with ministers, Lieutenant-Governor in Council, Lieutenant-Governor or Chief Commissioner as was at the relevant time a Local Government for the purposes of the Government of India Act or any Act repealed by that Act, but does not, save where the context otherwise requires, include any Local Government in Burma or Aden;

“pension” in relation to persons in or formerly in the service of the Crown in India, Burma or Aden, means a pension, whether contributory or not, of any kind whatsoever payable to or in respect of any such person, and includes retired pay so payable, a gratuity so payable and any sum or sums so payable by way of the return, with or without interest thereon or any other addition thereto, of subscriptions to a provident fund;

“pleader” includes advocate;

“Provincial Act” and “Provincial law” mean, subject to the provisions of this section, an Act passed or law made by a Provincial Legislature established under this Act;

“public notification” means a notification in the Gazette of India or, as the case may be, the official Gazette of a Province;

“securities” includes stock;

“taxation” includes the imposition of any tax or impost whether general or local or special, and “tax” shall be construed accordingly;

“railway” includes a tramway not wholly within a municipal area;

"federal railway" does not include an Indian State railway but, save as aforesaid, includes any railway not being a minor railway;

"Indian State railway" means a railway owned by a State and either operated by the State, or operated on behalf of the State otherwise than in accordance with a contract made with the State by or on behalf of the Secretary of State in Council, the Federal Government, the Federal Railway Authority, or any company operating a federal railway;

"minor railway" means a railway which is wholly situate in one unit and does not form a continuous line of communication with a federal railway, whether of the same gauge or not; and

"unit" means a Governor's Province, a Chief Commissioner's Province or a Federated State.

(3) No Indian State shall, for the purpose of any reference in this Act to Federated States, be deemed to have become a Federated State until the establishment of the Federation.

(4) In paragraph (3) of section eighteen of the Interpretation Act, 1889 (which paragraph defines the expression "colony") for the words "exclusive of the British Islands and of British India" there shall be substituted the words "exclusive of the British Islands and of British India and of British Burma."

(5) Any Act of Parliament containing references to India or any part thereof, to countries other than or situate outside India or other than or situate outside British India, to His Majesty's dominions, to a British possession, to the Secretary of State in Council, to the Governor-General in Council, to a Governor in Council or to Legislatures, courts, or authorities in, or to matters relating to the government or administration of, India or British India shall have effect subject to such adaptations and modifications as His Majesty in Council may direct, being adaptations

and modifications which appear to His Majesty in Council to be necessary or expedient in consequence of the provisions of this Act or the Government of Burma Act, 1935.

Any power of any legislature under this Act to repeal or amend any Act adopted or modified by an Order in Council under this subsection shall extend to the repeal or amendment of that Order, and any reference in this Act to an Act of Parliament shall be construed as including a reference to any such Order.

(6) Any reference in this Act to Federal Acts or laws or Provincial Acts or laws, or to Acts or laws of the Federal or a Provincial Legislature, shall be construed as including a reference to an ordinance made by the Governor-General or a Governor-General's Act or, as the case may be, to an ordinance made by a Governor or a Governor's Act.

(7) References in this Act to the taking of an oath include references to the making of an affirmation.

PART XIII.

TRANSITIONAL PROVISIONS.

312. The provisions of this Part of this Act shall apply with respect to the period elapsing between the commencement of Part III of this Act and the establishment of the Federation.

313.—(1) Subject to the provisions of this Act for the time being in force, such executive authority as is hereinafter mentioned shall be exercised on behalf of His Majesty by the Governor-General in Council, either directly or through officers subordinate to him, but nothing in this section shall prevent the Indian Legislature from conferring functions upon subordinate authorities, or be deemed to transfer to the Governor-General in Council any functions conferred by any existing Indian law on any court, judge or officer, or on any local or other authority.

(2) Subject to the provisions of this Act for the time being

in force, the said executive authority extends—

- (a) to the matters with respect to which the Indian Legislature has, under the said provisions, power to make laws;
- (b) to the raising in British India on behalf of His Majesty of naval, military or air forces, and to the governance of His Majesty's forces borne on the Indian establishment;
- (c) to the exercise of such rights, authority and jurisdiction as are exercisable by His Majesty by treaty, grant, usage, sufferance or otherwise in and in relation to the tribal areas:

Provided that—

- (i) the said authority does not, save as expressly provided in the provisions of this Act for the time being in force, extend in any Province to matters with respect to which the Provincial Legislature has power to make laws;
- (ii) the said authority does not extend to the enlistment or enrolment in any force raised in British India of any person unless he is either a subject of His Majesty, or a native of India or of territories adjacent thereto; and
- (iii) commissions in any such forces shall be granted by His Majesty, save in so far as he may be pleased to delegate that power by virtue of the provisions of Part I of this Act or otherwise.

(3) References in the provisions of this Act for the time being in force to the Governor-General and the Federal Government shall, except as respects matters with respect to which the Governor-General is required by the said provisions to act in his discretion, be construed as references to the Governor-General in

Council, and any reference to the Federation, except where the reference is to the establishment of the Federation, shall be construed as a reference to British India, the Governor-General in Council, or the Governor-General, as the circumstances and the context may require :

Provided that—

- (a) any reference to the revenues of the Federation shall be construed as a reference to the revenues of the Governor-General in Council ;
- (b) the revenues of the Governor-General in Council shall, subject to the provisions of chapter I of Part VII of this Act with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to Provinces and to the provisions of this Act with respect to the Federal Railway Authority (so far as any such provisions are for the time being in force), include all revenues and public moneys raised or received either by the Governor-General in Council or by the Governor-General ;
- (c) the expenses of the Governor-General in discharging his functions as respects matters with respect to which he is required by the provisions of this Act for the time being in force to act in his discretion shall be defrayed out of the revenues of the Governor-General in Council.

(4) Any requirement in this Act that the Governor-General shall exercise his individual judgment with respect to any matter shall not come into force until the establishment of the Federation, but, notwithstanding that Part II of this Act has not come into operation, the following provisions of this Act, that is to say—

- (a) the provisions requiring the prior sanction of the Governor-General for certain legislative proposals ;
- (b) the provisions relating to broadcasting ;

(c) the provisions relating to directions to, and principles to be observed by, the Federal Railway Authority; and

(d) the provisions relating to civil services to be recruited by the Secretary of State,

shall have effect in relation to defence, ecclesiastical affairs, external affairs and the tribal areas as they have effect in relation to matters or functions with respect to, or in the exercise of, which the Governor-General is by the provisions of this Act for the time being in force required to act in his discretion, and any reference in any of the provisions of this Act for the time being in force to the special responsibilities of the Governor-General shall be construed as a reference to the special responsibilities which he will have when Part II of this Act comes into operation.

(5) Nothing in this section shall be construed as conferring on the Governor-General in Council any functions connected with the exercise of the functions of the Crown in its relations with Indian States.

314.—(1) The Governor-General in Council and the Governor-General, both as respects matters with respect to which he is required by or under this Act to act in his discretion and as respects other matters, shall be under the general control of, and comply with such particular directions, if any, as may from time to time be given by, the Secretary of State, but the validity of anything done by the Governor-General in Council or the Governor-General shall not be called in question on the ground that it was done otherwise than in accordance with the provisions of this subsection.

(2) The Secretary of State shall not give any direction to the Governor-General in Council with respect to any grant or appropriation of any part of the revenues of the Governor-General in Council except with the concurrence of his advisers.

Control of
the Secretary of
State.

(3) While this Part of this Act is in operation, the advisers of the Secretary of State shall not be more than twelve, nor less than eight, in number, and, notwithstanding anything in Part XI of this Act with respect to their term of office, on the establishment of the Federation such of the advisers as the Secretary of State may direct shall cease to hold office.

315.—(1) While this Part of this Act is in operation, no sterling loans shall be contracted by the Governor-General in Council, but in lieu thereof, if provision is made in that behalf by an East India Loans Act of the Parliament of the United Kingdom, the Secretary of State may, within such limits as may be prescribed by the Act, contract such loans on behalf of the Governor-General in Council. Sterling
loans.

(2) The Secretary of State shall not exercise any powers of borrowing as are mentioned in this section unless at a meeting of the Secretary of State and his advisers the borrowing has been approved by a majority of the persons present.

(3) There shall be inserted—

(a) in paragraph (d) of subsection (1) of section one of the Trustee Act, 1925, after the words “on the revenues of India”; and

(b) at the end of sub-paragraph (9) of paragraph (a) of section ten of the Trusts (Scotland) Act, 1921,

the words “or in any sterling loans raised by the Secretary of State on behalf of the Governor-General of India in Council “under the provisions of Part XIII of the Government of India “Act, 1935.”

(4) No deduction in respect of taxes imposed by or under any existing Indian law or any law of the Indian, the Federal or a Provincial Legislature shall be made, either before or after the establishment of the Federation, from any payment of principal or interest in respect of any loan contracted under this section

Part
III (B)
Ss. 316—
317

(5) Any legal proceedings in respect of any loan raised under this section may, either before or after the establishment of the Federation, be brought in the United Kingdom against the Secretary of State, but nothing in this section shall be construed as imposing any liability on the Exchequer of the United Kingdom.

Legislature.

316. The powers conferred by the provisions of this Act for the time being in force on the Federal Legislature shall be exercisable by the Indian Legislature, and accordingly references in those provisions to the Federal Legislature and Federal Laws shall be construed as references to the Indian Legislature and laws of the Indian Legislature, and references in those provisions to Federal taxes shall be construed as references to taxes imposed by laws of the Indian Legislature :

Provided that nothing in this section shall empower the Indian Legislature to impose limits on the power of the Governor-General in Council to borrow money.

Continu-
ance of
certain
provisions
of Govern-
ment of
India Act.

317.—(1) The provisions of the Government of India Act set out, with amendments consequential on the provisions of this Act, in the Ninth Schedule to this Act (being certain of the provisions of that Act relating to the Governor-General, the Commander-in-Chief, the Governor-General's Executive Council and the Indian Legislature and provisions supplemental to those provisions) shall, subject to those amendments, continue to have effect notwithstanding the repeal of that Act by this Act :

Provided that nothing in the said provisions shall affect the provisions of the last but one preceding Section.

(2) In the said provisions, the expression "this Act" means the said provisions.

(3) The substitution in the said provisions of references to the Secretary of State for references to the Secretary of State in Council shall not render invalid anything done thereunder by the

Secretary of State in Council before the commencement of Part III of this Act.

318.—(1) Notwithstanding that the Federation has not yet been established, the Federal Court and the Federal Public Service Commission and the Federal Railway Authority shall come into existence and be known by those names, and shall perform in relation to British India the like functions as they are by or under this Act to perform in relation to the Federation when established.

Provisions
as to
Federal
Court and
certain
other
Federal
authorities.

(2) Nothing in this section affects any power of His Majesty in Council to fix a date later than the commencement of Part III of this Act for the coming into operation, either generally or for particular purposes, of any of the provisions of this Act relating to the Federal Court, the Federal Public Service Commission or the Federal Railway Authority.

319.—(1) Any rights acquired by, or liabilities incurred by or on behalf of the Governor-General in Council or the Governor-General between the commencement of Part III of this Act and the establishment of the Federation shall, after the establishment of the Federation, be rights and liabilities of the Federation, and any legal proceedings pending at the establishment of the Federation by or against the Governor-General in Council or the Governor-General shall, after the establishment of the Federation, be continued by or against the Federation.

Rights and
liabilities of
Governor-
General in
Council and
Governor-
General to
continue
after estab-
lishment of
Federation.

(2) The provisions of subsection (1) of this section shall apply in relation to rights and liabilities of the Secretary of State in Council which have, by virtue of the provisions of this Act, become rights or liabilities of the Governor-General in Council as they apply in relation to the rights and liabilities therein mentioned.

SCHEDULES.

FIRST SCHEDULE.

COMPOSITION OF THE FEDERAL LEGISLATURE.

PART I.

REPRESENTATIVES OF BRITISH INDIA.

General Qualification for Membership.

1. A person shall not be qualified to be chosen as a representative of British India to fill a seat in the Federal Legislature unless he—

(a) is a British subject, or the Ruler or a subject of an Indian State which has acceded to the Federation; and

(b) is, in the case of a seat in the Council of State, not less than thirty years of age and, in the case of a seat in the Federal Assembly, not less than twenty-five years of age; and

(c) possesses such, if any, of the other qualifications specified in, or prescribed under, this Part of this Schedule as may be appropriate in his case:

Provided that the Ruler or a subject of an Indian State which has not acceded to the Federation—

(i) shall not be disqualified under sub-paragraph (a) of this paragraph to fill a seat allocated to a Province if he would be eligible to be elected to the Legislative Assembly of that Province; and

(ii) in such cases as may be prescribed, shall not be disqualified under the said sub-paragraph (a) to fill a seat allocated to a Chief Commissioner's Province.

2. Upon the expiration of the term for which he is chosen to serve as a member of the Federal Legislature, a person, if otherwise duly qualified, shall be eligible to be chosen to serve for a further term.

The Council of State.

3. Of the one hundred and fifty-six seats in the Council of State to be filled by representatives of British India one hundred and fifty seats shall be allocated to the Governors' Provinces, the Chief Commissioners' Provinces and the Anglo-Indian, European and Indian Christian communities in the manner shown in division (i) of the relevant Table of Seats appended to this Part of this Schedule, and six seats shall be filled by persons chosen by the Governor-General in his discretion.

4. To each Governor's Province, Chief Commissioner's Province and community specified in the first column of division (i) of the Table there shall be allotted the number of seats specified in the second column opposite to that Province or community, and of the seats so allotted to a Governor's Province or a Chief Commissioner's Province, the number specified in the third column shall be general seats, the number specified in the fourth column shall be seats for representatives of the scheduled castes, the number specified in the fifth column shall be Sikh seats, the number specified in the sixth column shall be Muhammadan seats, and the number specified in the seventh column shall be seats reserved for women.

5. A Governor's Province or a Chief Commissioner's Province exclusive of any portion thereof which His Majesty in Council may deem unsuitable for inclusion in any constituency or in any constituency of any particular class, shall be divided into territorial constituencies—

- (a) for the election of persons to fill the general seats, if any;
- (b) for the election of persons to fill the Sikh seats, if any; and
- (c) for the election of persons to fill the Muhammadan seats, if any, or, if as respects any class of constituency it is so prescribed, may form one territorial constituency.

To each territorial constituency of any class one or more seats of that class shall be assigned.

6.—(1) No person shall be entitled to vote at an election to fill Sikh seat or a Muhammadan seat in the Council of State unless he is a Sikh or a Muhammadan, as the case may be.

(2) No person who is, or is entitled to be, included in the electoral roll for a territorial constituency in any Province for the election of persons to fill a Sikh seat or a Muhammadan seat in the Council of State shall be entitled to vote at an election to fill a general seat therein allotted to that Province.

(3) No Anglo-Indian, European or Indian Christian shall be entitled to vote at an election to fill a general seat in the Council of State.

(4) Subject as aforesaid, the qualifications entitling persons to vote in territorial constituencies at elections of members of the Council of State shall be such as may be prescribed.

7. Nothing in the two last preceding paragraphs shall apply in relation to British Baluchistan, and a person to fill the seat in the Council of State allotted to that Province shall be chosen in such manner as may be prescribed.

8. In any Province to which a seat to be filled by a representative of the scheduled castes is allotted, a person to fill that seat shall be chosen by the members of those castes who hold seats in the Chamber or, as the case may be, either Chamber of the Legislature of that Province.

9. In any Province to which a seat reserved for women is allotted, a woman to fill that seat shall be chosen by the persons, whether men or women, who hold seats in the Chamber or, as the case may be, the Chambers of the Legislature of that Province.

10. Persons to fill the seats allotted to the Anglo-Indian, European and Indian Christian communities shall be chosen by the members of Electoral Colleges consisting of such Anglo-Indians, Europeans and Indian Christians, as the case may be, as are members of the Legislative Council of any Governor's Province or of the Legislative Assembly of any Governor's Province.

The Rules regulating the conduct of elections by the European Electoral College shall be such as to secure that on any occasion where more than one seat falls to be filled by the College no two of the seats to be then filled shall be filled by persons who are normally resident in the same Province.

11. A person shall not be qualified to hold a seat in the Council of State unless—

(a) in the case of a seat allotted to a Governor's Province or a Chief Commissioner's Province, he is qualified to vote in a territorial constituency in the Province at an election of a member of the Council of State, or, in the case of a seat allotted to British Baluchistan, possesses such qualifications as may be prescribed;

(b) in the case of a seat allotted to the Anglo-Indian, the European or the Indian Christian community, he possesses such qualifications as may be prescribed.

12. Subject to the provisions of the four next succeeding paragraphs, the term of office of a member of the Council of State shall be nine years :

Provided that a person chosen to fill a casual vacancy shall be chosen to serve only for the remainder of his predecessor's term of office.

13. Upon the first constitution of the Council of State persons shall be chosen to fill all the seats allotted to Governors' Provinces, Chief Commissioners' Provinces and communities, but, for the purpose of securing

that in every third year one-third of the holders of such seats shall retire, one-third of the persons first chosen shall be chosen to serve for three years only, one-third shall be chosen to serve for six years only and one-third shall be chosen to serve for nine years, and thereafter in every third year persons shall be chosen to fill for nine years the seats then becoming vacant in consequence of the provisions of this paragraph.

14. In the case of a Province specified in column one in division (ii) of the Table of Seats, the numbers specified as respects seats of different classes in columns two to six, in columns seven to eleven and in columns twelve to sixteen respectively shall be the numbers of the seats of the different classes to be filled upon the first constitution of the Council by members chosen to serve for three years only, by members chosen to serve for six years only, and by members chosen to serve for nine years.

15. The person chosen upon the first constitution of the Council to fill the Anglo-Indian seat shall be chosen to serve for nine years; of the seven persons then chosen to fill the European seats, three shall be chosen to serve for three years only, one shall be chosen to serve for six years only and three shall be chosen to serve for nine years; and, of the two persons then chosen to fill the Indian Christian seats, one shall be chosen to serve for three years only and one shall be chosen to serve for nine years.

16. Upon the first constitution of the Council of State two of the persons to be chosen by the Governor-General shall be chosen to serve for three years only, two shall be chosen to serve for six years only and two shall be chosen to serve for nine years.

The Federal Assembly.

17. The allocation of seats in the Federal Assembly, other than seats allotted to Indian States, shall be as shown in the relevant Table of Seats appended to this Part of this Schedule.

18. To each Governor's Province and Chief Commissioner's Province specified in the first column of the Table there shall be allotted the number of seats specified in the second column opposite to that Province, and of those seats—

- (i) the number specified in the third column shall be general seats, of which the number specified in the fourth column shall be reserved for members of the scheduled castes;

- (ii) the numbers specified in the next eight columns shall be the numbers of seats to be filled respectively by persons chosen to represent (a) the Sikh community; (b) the Muhammadan community; (c) the Anglo-Indian community; (d) the European community; (e) the Indian Christian community; (f) the interests of commerce and industry; (g) landholders; and (h) the interests of labour; and
- (iii) the number specified in the thirteenth column shall be the number of seats reserved to women.

There shall also be in the Federal Assembly four seats not allotted to any Province, of which three shall be seats to be filled by representatives of commerce and industry and one shall be a seat to be filled by a representative of labour.

19. Subject to the provisions of the next succeeding paragraph, persons to fill the seats in the Federal Assembly allotted to a Governor's Province as general seats, Sikh seats or Muhammadan seats shall be chosen by electorates consisting of such of the members of the Legislative Assembly of the Province as hold therein general seats, Sikh seats or Muhammadan seats respectively, voting in the case of a general election in accordance with the principle of proportional representation by means of the single transferable vote :

Provided that in the North-West Frontier Province the holders of Sikh seats, and in any Province in which seats are reserved for representatives of backward areas or backward tribes the holders of those seats, shall, for the purposes of this paragraph, be deemed to hold general seats.

20. The provisions of this paragraph shall have effect with respect to the general seats reserved in any Governor's Province for members of the scheduled castes :—

For the purposes of a general election of members of the Federal Assembly,—

- (a) there shall be a primary electorate consisting of all persons who were successful candidates at the primary elections held, in accordance with the provisions of the Fifth Schedule to this Act, on the occasion of the last general election of members of the Legislative Assembly of the Province for the purpose of selecting candidates for seats reserved for members of the scheduled castes ;

- (b) the members of the primary electorate so constituted shall be entitled to take part in a primary election held for the purpose of electing four candidates for each seat so reserved; and
- (c) no person who is not so elected as a candidate shall be qualified to be chosen to fill such a seat.

Rules made under this Part of this Schedule shall make provision as to the manner in which a casual vacancy occurring in a seat to which this paragraph applies is to be filled.

21. For the purpose of choosing persons to fill the women's seats in the Federal Assembly there shall be for British India an electoral college consisting of such women as are members of the Legislative Assembly of any Governor's Province, and the person to fill a woman's seat allotted to any particular Province shall be chosen by the members of the college.

Rules regulating the conduct of elections by the women's electoral college shall be such as to secure that, of the nine women's seats allotted to Provinces, at least two are held by Muhammadans and at least one by an Indian Christian.

22. For the purpose of choosing persons to fill the Anglo-Indian, European and Indian Christian seats in the Federal Assembly, there shall be for British India three electoral colleges consisting respectively of such persons as hold an Anglo-Indian, a European or an Indian Christian seat in the Legislative Assembly of any Governor's Province, and the person to fill an Anglo-Indian, European or Indian Christian seat allotted to any particular Province shall be chosen by the members of the appropriate electoral college.

In choosing at a general election the persons to fill the Indian Christian seats allotted to the Province of Madras, the Indian Christian electoral college shall vote in accordance with the principle of proportional representation by means of the single transferable vote.

23. Persons to fill the seats in the Federal Assembly which are to be filled by representatives of commerce and industry, landholders and representatives of labour shall be chosen—

- (a) in the case of a seat allotted to a Province which is to be filled by a representative of commerce and industry, by such chambers of commerce and similar associations voting in such manner as may be prescribed;

- (b) in the case of a seat allotted to a Province which is to be filled

by a landholder, by such persons voting in such territorial constituencies and in such manner as may be prescribed;

- (c) in the case of a seat allotted to a Province which is to be filled by a representative of labour, by such organisations, or in such constituencies, and in accordance with such manner of voting as may be prescribed;
- (d) in the case of one of the non-provincial seats which are to be filled by representatives of commerce and industry, by such Associated Chambers of Commerce, in the case of another such seat by such Federated Chambers of Commerce and in the case of the third such seat by such commercial bodies in Northern India, voting in each case in such manner as may be prescribed; and
- (e) in the case of the non-provincial seat which is to be filled by a representative of labour, by such organisations voting in such manner as may be prescribed.

24. Persons to fill the seats in the Federal Assembly allotted to Chief Commissioners' Provinces as general seats or Muhammadan seats shall be chosen—

- (a) in the case of Coorg, by the members of the Legislative Council; and
- (b) in other cases in such manner as may be prescribed.

25. A person shall not be qualified to hold a seat in the Federal Assembly, unless—

- (i) in the case of a general seat, a Sikh seat, a Muhammadan seat, an Anglo-Indian seat, a European seat, an Indian Christian seat or a woman's seat allotted to a Governor's Province or the Province of Coorg, he is qualified to hold a seat of the same class in the Legislative Assembly, or, in the case of Coorg, the Legislative Council, of that Province;
- (ii) in the case of any other seat, he possesses such qualifications as may be prescribed.

General.

26.—(1) In the foregoing provisions of this Schedule the following expressions have the meanings hereby assigned to them, that is to say:—

“a European” means a person whose father or any of whose other

male progenitors in the male line is or was of European descent and who is not a native of India;

"an Anglo-Indian" means a person whose father or any of whose other male progenitors in the male line is or was of European descent but who is a native of India;

"an Indian Christian" means a person who professes any form of the Christian religion and is not a European or an Anglo-Indian;

"the scheduled castes" means such castes, races or tribes or parts of or groups within castes, races or tribes, being castes, races, tribes, parts or groups which appear to His Majesty in Council to correspond to the classes of persons formerly known as "the depressed classes," as His Majesty in Council may specify; and

"prescribed" means prescribed by His Majesty in Council or, so far as regards any matter which under this Act the Federal Legislature or the Governor-General are competent to regulate, prescribed by an Act of that Legislature or by a rule made under the next succeeding paragraph.

(2) In this paragraph the expression "native of India" has the same meaning as it had for the purposes of section six of the Government of India Act, 1870, and accordingly it includes any person born and domiciled within the dominions of His Majesty in India or Burma of parents habitually resident in India or Burma and not established there for temporary purposes only.

27. In so far as provision with respect to any matter is not made by this Act or by His Majesty in Council or, after the constitution of the Federal Legislature, by Act of that Legislature (where the matter is one with respect to which that Legislature is competent to make laws), the Governor-General, exercising his individual judgment, may make rules for carrying into effect the foregoing provisions of this part of this Schedule and for securing the due constitution of the Council of State and the Federal Assembly and, in particular, but without prejudice to the generality of the foregoing words, with respect to—

- (i) the notification of vacancies, including casual vacancies and the proceedings to be taken for filling vacancies;
- (ii) the nomination of candidates;

- (iii) the conduct of elections, including the application to elections of the principle of proportional representation by means of the single transferable vote, and the rules to regulate elections where certain of the seats to be filled are to be filled by persons to be chosen to serve for different terms, or are reserved for members of the scheduled castes;
- (iv) the expenses of candidates at elections;
- (v) corrupt practices and other offences at or in connection with elections;
- (vi) the decision of doubts and disputes arising out of or in connection with the choice of persons to fill seats in the Council of State or the Federal Assembly; and
- (vii) the manner in which rules are to be carried into effect.

TABLE OF SEATS.

*The Council of State.**Representatives of British India.**(i) Allocation of seats.*

1 Province or Community.	2 Total seats.	3 General seats.	4 Seats for Scheduled Castes.	5 Sikh seats.	6 Muham- madan seats.	7 Women's seats.
Madras ..	20	14	1	—	4	1
Bombay. ...	16	10	1	—	4	1
Bengal ...	20	8	1	—	10	1
United Provinces ..	20	11	1	—	7	1
Punjab ...	16	3	—	4	8	1
Bihar ...	16	10	1	—	4	1
Central Provinces and Berar ...	8	6	1	—	1	—
Assam ...	5	3	—	—	2	—
North-West Frontier Province ...	5	1	—	—	4	—
Orissa ...	5	4	—	—	1	—
Sind ...	5	2	—	—	3	—
British Baluchistan	1	—	—	—	1	—
Delhi ...	1	1	—	—	—	—
Ajmer-Merwara ..	1	1	—	—	—	—
Coorg ...	1	1	—	—	—	—
Anglo-Indians ...	1	—	—	—	—	—
Europeans ...	7	—	—	—	—	—
Indian Christians ...	2	—	—	—	—	—
Totals ...	150	75	6	4	49	6

LAW OF PROTECTION OF INDIAN STATES

(ii) *Distribution of seats for purposes of triennial elections.*

Province.	Number of seats to be filled originally for three years only.					Number of seats to be filled originally for six years only.					Number of seats to be filled originally for nine years.				
	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Madras	5	..	..	..	1	7	..	..	2	1	7	1	..	2	1
Bombay	4	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Bengal	5	1	..	5	1	6	..	..	..	..	..	..	..	5	1
United Provinces	2	1	..	3	..	1	..	2	4	1	..	..	..	..	..
Punjab	..	..	..	4	..	..	..	..	2	..	..	..	..	..	..
Bihar	..	..	..	..	..	5	1	..	..	..	5	..	..	..	..
Central Provinces & Berar	..	..	..	..	..	6	1	..	..	..	..	..	..	..	..
Assam	..	..	..	..	..	3	1	..	2	..	..	..	..	..	..
North-West Frontier Province.	..	..	..	..	..	..	..	..	..	..	1	..	..	4	..
Orissa	4	..	..	1	..	..	..	..	..	..	..	..	..	1	..
Sind	2	..	..	3	..	..	..	..	..	..	..	..	..	..	..
British Baluchistan	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Delhi	..	..	..	..	..	..	..	..	..	..	1	..	..	..	..
Ajmer-Merwara	..	..	..	..	..	..	..	..	..	..	1	..	..	..	..
Coorg	..	..	..	..	..	..	..	..	..	..	1	..	..	..	..
Totals	22	2	2	18	2	28	2	2	15	2	25	2	1	16	2

TABLE OF SEATS.
The Federal Assembly.
Representatives of British India.

1	2	3	4	5	6	7	8	9	10	11	12	13
Province.	Total Seats.	General Seats		Sikh Seats.	Muhammadan Seats.	Anglo-Indian Seats.	European Seats.	Indian Christian Seats.	Seats for representatives of commerce and industry.	Land-holders' Seats.	Seats for representatives of labour.	Women's Seats.
		Total of General Seats.	General Seats reserved for Scheduled castes.									
Madras	37	19	4	...	3	1	1	2	2	1	1	1
Bombay	30	13	2	...	6	1	1	1	3	1	2	1
Bengal	37	10	3	...	17	1	1	1	3	1	1	1
United Provinces	37	19	3	...	12	1	1	1	...	1	1	1
Punjab	30	6	1	...	14	...	1	1	...	1	1	1
Bihar	30	16	2	6	9	...	1	1	...	1	1	1
Central Provinces and Berar	15	9	2	...	3	...	...	...	...	...	...	...
Assam	10	4	1	...	3	...	...	...	...	...	...	...
North-West Frontier Province	5	1	...	...	4	...	...	...	...	...	...	...
Orissa	5	4	1	...	1	...	...	...	...	...	...	...
Sind	5	1	...	...	3	...	...	...	...	...	...	...
British Baluchistan	1	1	...	...	1	...	...	...	...	...	...	...
Delhi	2	...	...	...	1	...	...	...	...	...	...	...
Ajmer-Merwara	1	1	...	...	...	...	...	...	...	...	...	...
Coorg	1	1	...	...	...	...	...	...	...	...	...	...
Non-Provincial Seats	4	...	...	...	...	...	...	...	...	...	...	...
Totals	250	105	19	6	82	4	8	8	11	7	10	9

PART II.

REPRESENTATIVES OF INDIAN STATES.

1. The allocation to Indian States of seats in the Federal Legislature shall be as shown in the Table appended to this Part of this Schedule, hereinafter referred to as the "Table of Seats," and persons to represent Indian States in that Legislature shall be chosen and appointed in accordance with the provisions hereinafter contained.

2. In the case of the Council of State, there shall be allotted to each State or, as the case may be, to each group of States specified in the first column of the Table of Seats, the number of seats specified in the second column of the said Table opposite to that State or to that group of States.

3. In the case of the Federal Assembly, there shall be allotted to each State or, as the case may be, to each group of States specified in the third column of the Table of Seats, the number of seats, specified in the fourth column of the said Table opposite to that State or to that group of States.

4. A person shall not be qualified to be appointed under this Part of this Schedule to fill a seat in either Chamber of the Federal Legislature unless he—

(i) is a British subject or the Ruler or a subject of an Indian State which has acceded to the Federation; and

(ii) is, in the case of a seat in the Council of State, not less than thirty years of age and, in the case of a seat in the Federal Assembly, not less than twenty-five years of age:

Provided that—

(a) the Governor-General may in his discretion declare as respects any State, the Ruler of which at the date of the establishment of the Federation was by reason of his minority not exercising ruling powers, that sub-paragraph (i) of this paragraph shall not apply to any named subject, or to subjects generally, of that State until that State comes under the rule of a Ruler who is of an age to exercise ruling powers; and

(b) sub-paragraph (ii) of this paragraph shall not apply to a Ruler who is exercising ruling powers.

5. Upon the expiration of the term for which he is appointed to serve as a member of the Federal Legislature, a person, if otherwise duly qualified, shall be eligible to be appointed to serve for a further term.

6. Subject to the special provisions hereinafter contained with respect to the appointment of persons to represent certain States, and groups of States comprised in Divisions XVI and XVII of the Tables of Seats—

- (i) the Rulers of States constituting a group of States to which a seat in the Council of State is allotted shall in rotation appoint a person to fill that seat; and
- (ii) the Rulers of the States constituting a group of States to which a seat in the Federal Assembly is allotted shall appoint jointly a person to fill that seat :

Provided that the Rulers of two or more States entitled to appoint in rotation a person to fill a seat in the Council of State allotted to a group of States may by agreement, and with the approval of the Governor-General in his discretion, appoint jointly a person to fill that seat.

7. The period for which a person shall be appointed to fill a seat shall be—

- (i) in the case of a person appointed to fill a seat in the Council of State—

- (a) by the Ruler of a State entitled to separate representation, nine years;
- (b) jointly by the Rulers of all the States in a group which have acceded to the Federation, three years;
- (c) by the Ruler of a State appointing in rotation, one year subject, however, to the special provisions of the next succeeding paragraph with respect to certain States therein mentioned;
- (d) jointly by Rulers of some only of the States in a group which have acceded to the Federation, a period equal to the aggregate of the periods for which each of them might in rotation have appointed a person to hold that seat or three years, whichever may be the shorter period;

- (e) in any other manner, three years; and

- (ii) in the case of a person appointed to fill a seat in the Federal Assembly, until the dissolution of the Assembly.

Provided that—

- (i) a person appointed to fill a seat upon the occurrence of a casual vacancy shall be appointed to fill that seat for the remainder of the period for which his predecessor was appointed;
- (ii) in the case of first appointments to fill seats in the Council of State the Governor-General in his discretion shall make by order provision for securing that approximately one-third of the persons appointed by Rulers entitled to separate representation shall be appointed to fill seats for three years only, approximately one-third to fill seats for six years only and approximately one-third to fill seats for nine years.

8. The Ruler of a State mentioned in this paragraph when appointing in rotation a person to fill a seat in the Council of State shall, notwithstanding anything in the preceding paragraph, be entitled to appoint that person to fill the seat—

- (a) in the case of the Rulers of Panna and of Mayurbhanj for two years; and
- (b) in the case of the Ruler of Pudukkottai, for three years.

9. Subject as hereinafter provided, the Rulers of two or more States forming a group to which one seat in either Chamber of the Federal Legislature is allotted shall, in choosing a person to be appointed by them jointly to fill that seat, each have one vote, and in the case of an equality of votes the choice shall be determined by lot or otherwise in such other manner as may be prescribed:

Provided that in choosing a person to be so appointed the Ruler of a State mentioned in sub-paragraph (a) of the preceding paragraph shall be entitled to two votes and the Ruler of the State mentioned in sub-paragraph (b) of that paragraph shall be entitled to three votes.

10. A seat in either Chamber allotted to a single State shall remain unfilled until the Ruler of that State has acceded to the Federation, and a seat in either Chamber which is the only seat therein allotted to a group of States shall remain unfilled until the Rulers of at least one-half of those States have so acceded but, subject as hereinafter provided, so long as one-tenth of the seats in either Chamber allotted either to single States or to groups of States remain unfilled by reason of the non-accession of a State or States, whether such non-accession be due to the minority of a Ruler or to any other cause, the persons appointed by the Rulers of States

to fill seats in that Chamber may from time to time in the prescribed manner appoint persons, not exceeding one-half of the number of seats so unfilled to be additional members of that Chamber :

Provided that the right to appoint such additional members shall not be exercised after the expiration of twenty years from the establishment of the Federation.

A person appointed under this paragraph as an additional member of either Chamber shall be appointed to fill his seat for a period of one year only.

11. Persons to fill the seats in the Federal Assembly allotted to any group of States mentioned in Division XVI of the Table of Seats as entitled to appoint persons to fill three such seats shall be appointed in the prescribed manner by the Rulers of such of the States in the group as have acceded to the Federation :

Provided that—

- (a) until the Rulers of two of those States have so acceded, all the three seats shall remain unfilled ; and
- (b) until the Rulers of four of those States have so acceded, two of the three seats shall remain unfilled ; and
- (c) until the Rulers of six of those States have so acceded, one of the three seats shall remain unfilled.

Seats in the Federal Assembly remaining unfilled by reason of the provisions of this paragraph shall be treated as seats remaining unfilled for the purposes of the last preceding paragraph.

12. The provisions of this paragraph shall apply with respect to the two seats in the Council of State and the five seats in the Federal Assembly allotted to the States comprised in Division XVII of the Table of Seats :—

- (a) the States in question are such States, being States which on the first day of January, nineteen hundred and thirty-five, were included in the Western India States Agency, the Gujarat States Agency, the Deccan States Agency, the Eastern States Agency, the Central India Agency or the Rajputana Agency, or were in political relations with the Government of the Punjab or the Government of Assam, as may be enumerated in rules made by the Governor-General in his discretion ;

(b) the Governor-General shall, in the rules so made by him, divide the said States into five groups, and of the five seats in the Federal Assembly allotted to those States one shall be deemed to be allotted to each of the groups;

(c) a seat in the Federal Assembly allotted to one of the said groups shall remain unfilled until the Rulers of at least one-half of the States in the group have acceded to the Federation, but, save as aforesaid, a person to fill such a seat shall be appointed in the prescribed manner by the Rulers of such of the States in the group as have acceded to the Federation;

(d) persons to fill the two seats in the Council of State allotted to the States comprised in the said Division shall be appointed in the prescribed manner by the persons appointed under the preceding sub-paragraph to fill seats in the Federal Assembly:

Provided that, so long as three of the five seats in the Federal Assembly remain unfilled, one of the two seats in the Council of State shall also remain unfilled:

(e) seats in the Federal Assembly or Council of State remaining unfilled by reason of the provisions of this paragraph, shall be treated as seats remaining unfilled for the purposes of the last but one preceding paragraph.

13. His Majesty in Council may by order vary the Table of Seats by transferring any State from one group of States specified in column one or column three of that Table to another group of States specified in the same column, if he deems it expedient so to do—

(a) with a view to reducing the number of seats which by reason of the non-accession of a State or States would otherwise remain unfilled; or

(b) with a view to associating in separate groups States whose rulers do, and States whose rulers do not, desire to make appointments jointly instead of in rotation,

and is satisfied that such variation will not adversely affect the rights and interest of any State:

Provided that a State mentioned in paragraph eight of this Part of this Schedule shall not be transferred to another group unless the Ruler of the State has agreed to relinquish the privileges enjoyed by him under the said paragraph and under paragraph nine.

Where an order varying the Table of Seats is made under this paragraph, references (whether express or implied) in the foregoing provisions of this Part of this Schedule to the Table shall be construed as references to the Table as so varied.

14. In so far as provision in that behalf is not made by His Majesty in Council, the Governor-General may in his discretion make rules for carrying into effect the provisions of this Part of this Schedule and in particular, but without prejudice to the generality of the foregoing words, with respect to—

- (a) the times at which and the manner in which appointments are to be made, the order in which Rulers entitled to make appointments in rotation are to make them and the date from which appointments are to take effect;
- (b) the filling of casual vacancies in seats;
- (c) the decision of doubts or disputes arising out of or in connection with any appointment; and
- (d) the manner in which the rules are to be carried into effect.

In this Part of this Schedule the expression “prescribed” means prescribed by His Majesty in Council or by rules made under this paragraph.

15. For the purposes of sub-section (2) of section five of this Act—

- (i) if the Rulers of at least one-half of the States included in any group to which one seat in the Council of State is allotted accede to the Federation, the Rulers so acceding shall be reckoned as being entitled together to choose one member of the Council of State;
- (ii) if, of the Rulers of States included in the groups to be formed out of the States comprised in Division XVII of the Table of Seats, sufficient accede to the Federation to entitle them to appoint one member or two members of the Federal Assembly, the Rulers so acceding shall be reckoned as being entitled together to choose one member of the Council of State and, if sufficient accede to entitle them to appoint three or more members of the Federal Assembly, the Rulers so acceding shall be reckoned as being entitled together to choose two members of the Council of State; and

- (iii) the population of a State shall be taken to be the population attributed thereto in column five of the Table of Seats or, if it is one of the States comprised in the said Division XVII of the Tables, such figure as the Governor-General may in his discretion determine, and the total population of the States shall be taken to be the total population thereof as stated at the end of the Table.

TABLE OF SEATS.

The Council of State and the Federal Assembly.

Representatives of Indian States.

1	2	3	4	5
States and Groups of States.	Number of Seats in Council of State.	States and Groups of States.	Number of Seats in the Federal Assembly.	Population.
		<i>Division I.</i>		
Hyderabad . . .	5	Hyderabad . . .	16	14,436,148
		<i>Division II.</i>		
Mysore	3	Mysore	7	6,557,302
		<i>Division III.</i>		
Kashmir	3	Kashmir	4	3,646,243
		<i>Division IV.</i>		
Gwalior	3	Gwalior	4	3,523,070
		<i>Division V.</i>		
Baroda	3	Baroda	3	2,443,007

1	2	3	4	5
States and Group of States.	Number of Seats in Council of State.	States and Groups of States.	Number of Seats in the Federal Assembly.	Population.
		<i>Division VI</i>		
Kalat ...	2	Kalat ...	1	342,101
		<i>Division VII</i>		
Sikkim ...	1	Sikkim ...	—	109,808
		<i>Division VIII.</i>		
1 Rampur ...	1	1 Rampur ...	1	465,225
2 Benares ...	1	2 Benares ...	1	391,272
		<i>Division IX.</i>		
1 Travancore ...	2	1 Travancore ...	5	5,095,973
2 Cochin ...	2	2 Cochin ...	1	1,205,016
3 Pudukkottai ...	1	3 Pudukkottai ...	1	400,694
Benganapalle ...		Banganapalle ...		39,218
Sandur ...		Sandur ...		13,583
		<i>Division X.</i>		
1 Udaipur ...	2	1 Udaipur ...	2	1,566,910
2 Jaipur ...	2	2 Jaipur ...	3	2,631,775
3 Jodhpur ...	2	3 Jodhpur ...	2	2,125,982
4 Bikaner ...	2	4 Bikaner ...	1	936,218
5 Alwar ...	1	5 Alwar ...	1	749,751
6 Kotah ...	1	6 Kotah ...	1	685,804
7 Bharatpur ...	1	7 Bharatpur ...	1	486,954
8 Tonk ...	1	8 Tonk ...	1	317,360
9 Dholpur ...	1	9 Dholpur ...	1	254,986
10 Karauli ...	1	Karauli ...		140,525
11 Bundi ...	1	10 Bundi ...	1	216,722
12 Sirohi ...	1	Sirohi ...		216,528

LAW OF PROTECTION OF INDIAN STATES

1	2	3	4	5
States and Groups of States.	Number of Seats in Council of State.	States and Groups of States.	Number of Seats in the Federal Assembly.	Population.
<i>Division X—concl'd.</i>				
13 Dungarpur ...	1	11 Dungarpur ...	1	227,544
14 Banswara ...	1	Banswara ...	...	260,670
15 Partabgarh ...	1	12 Partabgarh ...	1	76,539
Jhalawar ...	...	Jhalawar ...	...	107,890
16 Jaisalmer ...	1	13 Jaisalmer ...	1	76,255
Kishengarh ...	...	Kishengarh ...	...	85,744
<i>Division XI.</i>				
1 Indore ...	2	1 Indore ...	2	1,325,089
2 Bhopal ...	2	2 Bhopal ...	1	729,955
3 Rewa ...	2	3 Rewa ...	2	1,587,445
4 Datia ...	1	4 Datia ...	1	158,834
5 Orchha ...	1	Orchha ...	...	314,661
6 Dhar ...	1	5 Dhar ...	...	243,430
7 Dewas (Senior) ...	1	Dewas (Senior) ...	1	83,321
Lewas ((Junior) ...	...	Dewas (Junior) ...	...	70,513
8 Jaora ...	1	6 Jaora ...	1	100,166
Ratlam ...	...	Ratlam ...	...	107,321
9 Panna ...	1	7 Panna ...	...	212,130
Samthar ...	...	Samthar ...	1	33,307
Ajaigarh ...	...	Ajaigarh ...	...	85,895
10 B jawar ...	1	8 Bijawar ...	...	115,852
Charkhari ...	...	Charkhari ...	1	120,351
Chhatarpur ...	...	Chhatarpur ...	...	161,267
11 Baoni ...	1	9 Baoni ...	...	19,132
Nagod ...	...	Nagod ...	1	74,589
Maihar ...	...	Maihar ...	...	68,991
Baraundha ...	...	Baraundha ...	...	16,071
12 Barwani ...	1	10 Barwani	141,110
Ali Rajpur	Ali Rajpur ...	1	101,963
Shahpura	Shahpura	54,233

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1	2	3	4	5
States and Groups of States.	Number of Seats in Council of State.	States and Groups of States.	Number of Seats in the Federal Assembly.	Population.
Division XI—concl'd.				
13 Jhabua ...	1	11 Jhabua ...	1	145,522
Sailana ...		Sailana ...		35,223
Sitamau ...		Sitamau ...		28,422
14 Rajgarh ...	1	12 Rajgarh ...	1	134,891
Narsingarh ...		Narsingarh ...		113,873
Khilchipur ...		Khilchipur ...		45,583
Division XII.				
1 Cutch ...	1	1 Cutch ...	1	514,307
2 Idar ...	1	2 Idar ...	1	262,660
3 Nawanagar ...	1	3 Nawanagarh ...	1	409,192
4 Bhavnagar ...	1	4 Bhavnagar ...	1	500,274
5 Junagadh ...	1	5 Junagadh ...	1	545,152
6 Rajpipla ...	1	6 Rajpipla ...	1	206,114
Palanpur ...		Palanpur ...		264,179
7 Dhrangadhra ...	1	7 Dhranagdhra ...	1	88,961
Gondal ...		Gondal ...		205,846
8 Porbandar ...	1	8 Porbandar ...	1	115,673
Morvi ...		Morvi ...		113,023
9 Radhanpur ...	1	9 Radhanpur ...	1	70,530
Wankaner ...		Wankaner ...		44,259
Palitana ...		Palitana ...		62,150
10 Cambay ...	1	10 Cambay ...	1	87,761
Dharampur ...		Dharampur ...		112,031
Balasinor ...		Balasinor ...		52,525
11 Baria ...	1	11 Baria ...	1	159,429
Chhota Udepur ...		Chhota Udepur ...		144,640
Sant ...		Sant ...		83,531
Lunawada ...		Lunawada ...		95,162

LAW OF PROTECTION OF INDIAN STATES

1	2	3	4	5
States and Groups of States.	Number of Seats in Council of State.	States and Groups of States.	Number of Seats in the Federal Assembly.	Population.
Division XII—concl'd.				
12 Bansda ...	1	12 Bansda ...	1	48,839
Sachin ...		Sachin ...		22,107
Jawahar ...		Jawhar ...		57,261
Danta ...		Danta ...		26,196
13 Dhrol ...	1	Dhrol ...	1	27,639
Limbdi ...		Limbdi ...		40,088
Wadhwan ...		Wadhwan ...		42,602
Rajkot ...		Rajkot ...		75,540
Division XIII.				
1 Kolhapur ...	2	1 Kolhapur ...	1	957,137
2 Sangli ...	1	2 Sangli ...	1	258,442
Savantvadi ...		Savantvadi ...		230,589
3 Janjira ...	1	3 Janjira ...	1	110,379
Mudhol ...		Mudhol ...		62,832
Bhor ...		Bhor ...		141,546
4 Jamkhandi ...	1	4 Jamkhandi ...	1	114,270
Miraj (Senior) ...		Miraj (Senior) ...		93,938
Miraj (Junior) ...		Miraj (Junior) ...		40,684
Kurundwad (Senior) ...		Kurundwad (Senior) ...		44,204
Kurundwad (Junior) ...		Kurundwad (Junior) ...		39,583
5 Akalkot ...	1	5 Akalkot ...	1	92,605
Phaltan ...		Phaltan ...		58,761
Jath ...		Jath ...		91,099
Aundh ...		Aundh ...		76,507
Ramdurg ...		Ramdurg ...		35,454

1	2	3	4	5	
States and Groups of States.	Number of Seats in Council of State.	States and Groups of States.	Number of Seats in the Federal Assembly.	Population.	
Division XIV.					
1 Patiala ...	2	1 Patiala ...	2	1,625,520	
2 Bahawalpur ...	2	2 Bahawalpur ...	1	984,612	
3 Khairpur ...	1	3 Khairpur ...	1	227,183	
4 Kapurthala ...	1	4 Kapurthala ...	1	316,757	
5 Jind ...	1	5 Jind ...	1	324,676	
6 Nabha ...	1	6 Nabha ...	1	287,574	
7 Mandi ...	1	7 Tehri-Garhwal ...	1	349,573	
Bilaspur ...		8 Mandi ...	1	207,465	
Suket ...		Bilaspur ...		100,994	
8 Tehri-Garhwal ...	1	Suket ...	1	58,408	
Sirmur ...		9 Sirmour ...		1	148,568
Chamba ...		Chamba ...		1	146,870
9 Faridkot ...	1	10 Faridkot ...	1	164,364	
Malerkotla ...		Malerkotla ...		83,072	
Loharu ...		Loharu ...		23,338	
Division XV.					
1 Cooch Behar ...	1	1 Cooch Bihar ...	1	590,886	
2 Tripura ...	1	2 Tripura ...	1	382,450	
Manipur ...		3 Manipur ...	1	445,606	
Division XVI.					
1 Mayurbhanj ...	1	1 Mayurbhanj ...	1	889,603	
Sonepur ...		2 Sonepur ...	1	237,920	
2 Patna ...	1	3 Patna ...	1	566,924	
Kalahandi ...		4 Kalahandi ...	1	513,716	
3 Keonjhar ...	1	5 Keonjhar ...	1	460,609	
Dhenkanal ...		6 Gangpur ...	1	356,674	
Nayagarh ...		7 Bastar ...	1	524,721	
Talcher ...		8 Surguja ...	1	501,939	
Nilgiri ...					

LAW OF PROTECTION OF INDIAN STATES

1	2	3	4	5
States and Groups of States.	Number of Seats in Council of State.	States and Groups of States.	Number of Seats in the Federal Assembly.	Population.
<i>Division XVI—concl'd.</i>				
4 Gangpur ...	1	9 Dhenkanal ...	3	284,326
Bamra ...		Nayagarh ...		142,406
Seraikela ...		Seraikela ...		143,525
Baud ...		Baud ...		135,248
Bonai ...		Talcher ...		69,702
5 Bastar ...	1	Bonai ...	3	80,186
Surguja ...		Nilgiri ...		68,594
Raigarh ...		Bamra ...		151,047
Nandgaon ...				
6 Khairagarh ...	1	10 Raigarh ...	3	277,569
Jashpur ...		Khairagarh ...		157,400
Kanker ...		Jashpur ...		193,698
Korea ...		Kanker ...		136,101
Sarangarh ...		Sarangarh ...		128,967
		Korea ...		90,886
		Nandgaon ...		182,380
<i>Division XVII.</i>				
States not mentioned in any of the preceding Divisions, but described in paragraph 12 of this Part of this Schedule.	2	States not mentioned in any of the preceding Divisions, but described in paragraph 12 of this Part of this Schedule.	5	3,032,197

Total population of the States in this Table ... 78,981,912

SECOND SCHEDULE.

PROVISIONS OF THIS ACT WHICH MAY BE AMENDED
WITHOUT AFFECTING THE ACCESSION OF A STATE.

- Part I, in so far as it relates to the Commander-in-Chief.
- Part II, chapter II, save with respect to the exercise by the Governor-General on behalf of His Majesty of the executive authority of the Federation, and the definition of the functions of the Governor-General; the executive authority of the Federation; the functions of the council of ministers, and the choosing and summoning of ministers and their tenure of office; the power of the Governor-General to decide whether he is entitled to act in his discretion or exercise his individual judgment; the functions of the Governor-General with respect to external affairs and defence; the special responsibilities of the Governor-General relating to the peace or tranquillity of India or any part thereof, the financial stability and credit of the Federal Government, the rights of Indian States and the rights and dignity of their Rulers, and the discharge of his functions by or under the Act in his discretion or in the exercise of his individual judgment; His Majesty's Instrument of Instructions to the Governor-General; the superintendence of the Secretary of State; and the making of rules by the Governor-General in his discretion for the transaction of, and the securing of transmission to him of information with respect to, the business of the Federal Government.
- „ chapter III, save with respect to the number of the representatives of British India and of the Indian States in the Council of State

Part II, chapter III—
cont.

and the Federal Assembly and the manner in which the representatives of the Indian States are to be chosen; the disqualifications for membership of a Chamber of the Federal Legislature in relation to the representatives of the States; the procedure for the introduction and passing of Bills; joint sittings of the two Chambers; the assent to Bills, or the withholding of assent from Bills, by the Governor-General; the reservation of Bills for the signification of His Majesty's pleasure; the annual financial statement; the charging on the revenues of the Federation of the salaries allowances and pensions payable to or in respect of judges of the Federal Court, of expenditure for the purpose of the discharge by the Governor-General of his functions with respect to external affairs, defence, and the administration of any territory in the direction and control of which he is required to act in his discretion and of the sums payable to His Majesty in respect of the expenses incurred in discharging the functions of the Crown in its relations with Indian States; the procedure with respect to estimates and demands for grants; supplementary financial statements; the making of rules by the Governor-General for regulating the procedure of, and the conduct of business in, the Legislature in relation to matters where he acts in his discretion or exercises his individual judgment, and for prohibiting the discussion of, or the asking of questions on, any matter connected with or the personal conduct of the Ruler or ruling family of any Indian States; the making of rules by the Governor-General

as to the procedure with respect to joint sittings of, and communications between, the two chambers and the protection of judges of the Federal Court and State High Courts from discussion in the Legislature of their conduct.

Part II, chapter IV,	save with respect to the power of the Governor-General to promulgate ordinances in his discretion or in the exercise of his individual judgment, or to enact Governor-General's Acts.
Part III, chapter I,	The whole chapter
„ chapter II,	save with respect to the special responsibilities of the Governor relating to the rights of Indian States and the rights and dignity of the Rulers thereof and to the execution of orders or directions of the Governor-General, and the superintendence of the Governor-General in relation to those responsibilities.
„ chapter III,	save with respect to the making of rules by the Governor for prohibiting the discussion of, or the asking of questions on, any matter connected with or the personal conduct of the Ruler or ruling family of any Indian State, and the protection of judges of the Federal Court and State High Courts from discussion in the Legislature or their conduct.
„ chapter IV.	The whole chapter.
„ chapter V.	„
„ chapter VI.	„
Part IV.	The whole Part.
Part V, chapter I,	save with respect to the power of the Federal Legislature to make laws for a State; the power of the Governor-General to empower either the Federal Legislature

Part V, chapter I, <i>Cont.</i>	or Provincial Legislature to enact a law with respect to any matter not enumerated in any of the Lists in the Seventh Schedule to this Act; any power of a State to repeal a Federal law, and the effect of inconsistencies between a Federal law and a State law.
„ chapter II,	save with respect to the previous sanction of the Governor-General to the introduction or moving of any Bill or amendment affecting matters as respects which the Governor-General is required to act in his discretion; the power of Parliament to legislate for British India or any part thereof, or the restrictions on the power of the Federal Legislature and of Provincial Legislatures to make laws on certain matters.
Part V, chapter III.	The whole chapter.
Part VI,	save in so far as the provisions of that Part relate to Indian States, or empower the Governor-General to issue orders to the Governor of a Province for preventing any grave menace to the peace of tranquillity of India or any part thereof.
Part VII, chapter I,	in so far as it relates to Burma.
„ chapter II,	save with respect to loans and guarantees to Federated States and the appointment, removal and conditions of service of the Auditor-General.
„ chapter III,	save in so far as it affects suits against the Federation by a Federated State.
Part VIII,	save with respect to the constitution and functions of the Federal Railway Authority; the conduct of business between the Authority and the Federal Government, and the Railway Tribunal and any matter with respect to which it has jurisdiction.

Part IX, chapter I,	in so far as it relates to appeals to the Federal Court from High Courts in British India; the power of the Federal Legislature to confer further powers upon the Federal Court for the purpose of enabling it more effectively to exercise the powers conferred upon it by this Act.
„ chapter II.	The whole chapter.
Part X,	save with respect to the eligibility of Rulers and subjects of Federated States for civil Federal office.
Part XI.	The whole Part.
Part XII, „	save with respect to the saving for rights and obligations of the Crown in its relations with Indian States; the use of His Majesty's forces in connection with the discharge of the functions of the Crown in its said relations; the limitation in relation to Federated States of His Majesty's power to adapt and modify existing Indian laws; His Majesty's powers and jurisdiction in Federated States, and resolutions of the Federal Legislature or any Provincial Legislature recommending amendments of this Act or Orders in Council made thereunder; and save also the provisions relating to the interpretation of this Act so far as they apply to provisions of this Act which may not be amended without affecting the accession of a State.
Part XIII.	The whole Part.
First Schedule.	The whole Schedule, except Part II thereof.
Third Schedule.	The whole Schedule.
Fourth Schedule,	save with respect to the oath or affirmation to be taken or made by the Ruler or subject of an Indian State.

Fifth Schedule.	The whole Schedule.
Sixth Schedule.	„
Seventh Schedule.	Any entry in the Legislative Lists in so far as the matters to which it relates have not been accepted by the State in question as matters with respect to which the Federal Legislature may make laws for that State.
Eighth Schedule.	The whole Schedule.
Ninth Schedule.	„
Tenth Schedule.	„

THIRD SCHEDULE .

PROVISIONS AS TO GOVERNOR-GENERAL AND GOVERNORS OF PROVINCES.

1. There shall be paid to the Governor-General and to the Governors of the Provinces the following annual salaries, that is to say:—

The Governor-General	...	250,800 rupees.
The Governor of Madras	...	} 120,000 rupees.
The Governor of Bombay	...	
The Governor of Bengal	...	
The Governor of the United Provinces	...	} 100,000 rupees.
The Governor of the Punjab	...	
The Governor of Bihar	...	
The Governor of the Central Provinces and Berar	...	72,000 rupees.
The Governor of Assam	...	} 66,000 rupees.
The Governor of the North-West Frontier Province.	...	
The Governor of Orissa	...	
The Governor of Sind	...	

2. There shall be paid to the Governor-General and to the Governors such allowances for expenses in respect of equipment and travelling upon appointment and such allowances during their terms of office as may from time to time be fixed by His Majesty in Council, and such provision shall be made for enabling the Governor-General and the Governors to discharge conveniently and with dignity the duties of their offices as may be determined by His Majesty in Council.

3. While the Governor-General or a Governor is absent on leave, he shall in lieu of his salary be entitled to such leave allowance as may be fixed by His Majesty in Council.

4. There shall be granted to and in respect of the Governor-General and the Governor of every Province such customs privileges as may be specified by Order in Council.

5. While any person appointed by His Majesty to act as Governor-General or as a Governor is so acting, he shall be entitled to the same salary and, save as may be otherwise provided by His Majesty in Council, the same allowances and privileges as the Governor-General or that Governor.

6. Any sums required to give effect to the provisions of this Schedule shall, in the case of the Governor-General or a person acting as such, be paid out of and charged on the revenues of the Federation and, in the case of a Governor or a person acting as such, be paid out of and charged on the revenues of the Province.

FOURTH SCHEDULE.

FORMS OF OATHS OR AFFIRMATIONS.

I.

Form of oath or affirmation to be taken or made by a member of a Legislature who is a British subject:—

“I, A.B., having been elected [*or nominated or appointed*] a member of this Council [*or Assembly*], do solemnly swear [*or affirm*] that I will be faithful and bear true allegiance to His Majesty the King, Emperor of India, His heirs and successors, and that I will faithfully discharge the duty upon which I am about to enter.”

2.

Form of oath or affirmation to be taken or made by a member of a Legislature who is the Ruler of an Indian State:—

“I, A.B., having been elected [*or nominated or appointed*] a member of this Council [*or Assembly*], do solemnly swear [*or affirm*] that I will be faithful and bear true allegiance

in my capacity as Member of this Council [or Assembly] to His Majesty the King, Emperor of India, His heirs and successors, and that I will faithfully discharge the duty upon which I am about to enter."

3.

Form of oath or affirmation to be taken or made by a member of a Legislature who is a subject of the Ruler of an Indian State—

"I, A.B., having been elected [or nominated or appointed] a member of this Council [or Assembly], do solemnly swear [or affirm] that saving the faith and allegiance which I owe to C.D., his heirs and successors, I will be faithful and bear true allegiance in my capacity as Member of this Council [or Assembly] to His Majesty the King, Emperor of India, His heirs and successors, and that I will faithfully discharge the duty upon which I am about to enter."

4.

Form of judicial oath or affirmation to be taken or made by a British subject:—

"I, A.B., having been appointed Chief Justice [or a judge] of the Court do solemnly swear [or affirm] that I will be faithful and bear true allegiance to His Majesty the King, Emperor of India, His heirs and successors and that I will faithfully perform the duties of my office to the best of my ability, knowledge and judgment."

5.

Form of judicial oath or affirmation to be taken or made by a subject of the Ruler of an Indian State:—

"I, A.B., having been appointed Chief Justice [or a judge] of the Court do solemnly swear [or affirm] that saving the faith and allegiance which I owe to C.D., his heirs and successors, I will be faithful and bear true allegiance in my judicial capacity to His Majesty the King, Emperor of India, His heirs and successors, and that I will faithfully perform the duties of my office to the best of my ability, knowledge and judgment."

SEVENTH SCHEDULE.

LEGISLATIVE LISTS.

LIST I.

FEDERAL LEGISLATIVE LIST.

1. His Majesty's naval, military and air forces borne on the Indian establishment and any other armed force raised in India by the Crown, not being forces raised for employment in Indian States or military or armed police maintained by Provincial Governments; any armed forces which are not forces of His Majesty, but are attached to or operating with any of His Majesty's naval, military or air forces borne on the Indian establishment; central intelligence bureau; preventive detention in British India for reasons of State connected with defence, external affairs, or the discharge of the functions of the Crown in its relations with Indian States.

2. Naval, military and air force works; local self-Government in cantonment areas (not being cantonment areas of Indian State troops), the regulation of house accommodation in such areas, and, within British India, the delimitation of such areas.

3. External affairs; the implementing of treaties and agreements with other countries; extradition, including the surrender of criminals and accused persons to parts of His Majesty's dominions outside India.

4. Ecclesiastical affairs, including European cemeteries.

5. Currency, coinage and legal tender.

6. Public debt of the Federation.

7. Posts and telegraphs, including telephones, wireless, broadcasting, and other like forms of communication; Post Office Savings Bank.

8. Federal Public Services and Federal Public Service Commission.

9. Federal pensions, that is to say, pensions payable by the Federation or out of Federal revenues.

10. Works, lands and buildings vested in, or in the possession of, His Majesty for the purposes of the Federation (not being naval, military or air force works), but, as regards property situate in a Province, subject always to Provincial legislation, save in so far as Federal law otherwise provides, and, as regards property in a Federal State held by virtue of any lease or agreement with that State, subject to the terms of that lease or agreement.

11. The Imperial Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial, and any similar institution controlled or financed by the Federation.

12. Federal agencies and institutes for the following purposes, that is to say, for research, for professional or technical training, or for the promotion of special studies.

13. The Benares Hindu University and the Aligarh Muslim University.

14. The Survey of India, the Geological, Botanical and Zoological Surveys of India; Federal meteorological organisations.

15. Ancient and historical monuments; archaeological sites and remains.

16. Census.

17. Admission into, and emigration and expulsion from, India, including in relation thereto the regulation of the movements in India of persons who are not British subjects domiciled in India, subjects of any Federated State, or British subjects domiciled in the United Kingdom; pilgrimages to places beyond India.

18. Port quarantine; seamen's and marine hospitals, and hospitals connected with port quarantine.

19. Import and export across customs frontiers as defined by the Federal Government.

20. Federal railways; the regulation of all railways other than minor railways in respect of safety, maximum and minimum rates and fares, station and service terminal charges, interchange of traffic and the responsibility of railway administrations as carriers of goods and passengers; the regulation of minor railways in respect of safety and the responsibility of the administrations of such railways as carriers of goods and passengers.

21. Maritime shipping and navigation, including shipping and navigation on tidal waters; Admiralty jurisdiction.

22. Major ports, that is to say, the declaration and delimitation of such ports, and the constitution and powers of Port Authorities therein.

23. Fishing and fisheries beyond territorial waters.

24. Aircraft and air navigation; the provision of aerodromes; regulation and organisation of air traffic and of aerodromes.

25. Lighthouses, including lightships, beacons and other provision for the safety of shipping and aircraft.

26. Carriage of passengers and goods by sea or by air.

27. Copyright, inventions, designs, trademarks and merchandise marks.

28. Cheques, bills of exchange, promissory notes and other like instruments

29. Arms; firearms; ammunition.

30. Explosives.

31. Opium, so far as regards cultivation and manufacture, or sale for export.

32. Petroleum and other liquids and substances declared by Federal law to be dangerously inflammable, so far as regards possession, storage and transport.

33. Corporations, that is to say, the incorporation, regulation and winding-up of trading corporations, including banking, insurance and financial corporations, but not including corporations owned or controlled by a Federated State and carrying on business only within that State or co-operative societies, and of corporations, whether trading or not, with objects not confined to one unit.

34. Development of industries, where development under Federal control is declared by Federal law to be expedient in the public interest.

35. Regulation of labour and safety in mines and oilfields.

36. Regulation of mines and oilfields and mineral development to the extent to which such regulation and development under Federal control is declared by Federal law to be expedient in the public interest.

37. The law of insurance, except as respects insurance undertaken by a Federated State, and the regulation of the conduct of insurance business, except as respects business undertaken by a Federated State; Government insurance, except so far as undertaken by a Federated State, or, by virtue of any entry in the Provincial Legislative List or the Concurrent Legislative List, by a Province.

38. Banking, that is to say, the conduct of banking business by corporations other than corporations owned or controlled by a Federated State and carrying on business only within that State.

39. Extension of the powers and jurisdiction of members of a police force belonging to any part of British India to any area in another Governor's Province or Chief Commissioner's Province, but not so as to enable the police of one part to exercise powers and jurisdiction elsewhere without the consent of the Government of the Province or the Chief Commissioner, as the case may be, extension of the powers and jurisdiction of members of a police force belonging to any unit to railway areas outside that unit.

40. Elections to the Federal Legislature, subject to the provisions of this Act and of any Order in Council made thereunder.

41. The salaries of the Federal Ministers, of the President and Vice-President of the Council of State and of the Speaker and Deputy Speaker of the Federal Assembly; the salaries, allowances and privileges of the members of the Federal Legislature; and, to such extent as is expressly authorised by Part II of this Act, the punishment of persons who refuse to give evidence or produce documents before Committees of the Legislature.

42. Offences against laws with respect to any of the matters in this list.

43. Inquiries and statistics for the purposes of any of the matters in this list.

44. Duties of customs, including export duties.

45. Duties of excise on tobacco and other goods manufactured or produced in India except—

(a) alcoholic liquors for human consumption;

(b) opium, Indian hemp and other narcotic drugs and narcotics; non-narcotic drugs;

(c) medicinal and toilet preparations containing alcohol, or any substance included in sub-paragraph (b) of this entry.

46. Corporation tax.

47. Salt.

48. State lotteries.

49. Naturalisation.
50. Migration within India from or into a Governor's Province or a Chief Commissioner's Province.
51. Establishment of standards of weight.
52. Ranchi European Mental Hospital.
53. Jurisdiction and powers of all courts, except the Federal Court, with respect to any of the matters in this list and, to such extent as is expressly authorised by Part IX of this Act, the enlargement of the appellate jurisdiction of the Federal Court, and the conferring thereon of supplemental powers.
54. Taxes on income other than agricultural income.
55. Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies.
56. Duties in respect of succession to property other than agricultural land.
57. The rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, proxies and receipts.
58. Terminal taxes on goods or passengers carried by railway or air; taxes on railway fares and freights.
59. Fees in respect of any of the matters in this list, but not including fees taken in any Court.

LIST II.

PROVINCIAL LEGISLATIVE LIST.

1. Public order (but not including the use of His Majesty's naval military or air forces in aid of the civil power); the administration of justice; constitution and organisation of all courts, except the Federal Court, and fees taken therein preventive detention for reasons connected with the maintenance of public order; persons subjected to such detention.
2. Jurisdiction and powers of all courts except the Federal Court, with respect to any of the matters in this list; procedure in Rent and Revenue Courts.
3. Police, including railway and village police.
4. Prisons, reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein; arrangements with other units for the use of prisons and other institutions.

5. Public debt of the Province.
6. Provincial Public Services and Provincial Public Service Commissions.
7. Provincial pensions, that is to say, pensions payable by the Province or out of Provincial revenues.
8. Works, lands and buildings vested in or in the possession of His Majesty for the purposes of the Province.
9. Compulsory acquisition of land.
10. Libraries, museums and other similar institutions controlled or financed by the Province.
11. Elections to the Provincial Legislature, subject to the provisions of this Act and of any Order in Council made thereunder.
12. The salaries of the Provincial Ministers, of the Speaker and Deputy Speaker of the Legislative Assembly, and, if there is a Legislative Council, of the President and Deputy President thereof; the salaries, allowances and privileges of the members of the Provincial Legislature; and, to such extent as is expressly authorised by Part III of this Act, the punishment of persons who refuse to give evidence or produce documents before Committees of the Provincial Legislature.
13. Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.
14. Public health and sanitation; hospitals and dispensaries; registration of births and deaths.
15. Pilgrimages, other than pilgrimages to places beyond India.
16. Burials and burial grounds.
17. Education.
18. Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I; minor railways subject to the provisions of List I with respect to such railways; municipal tramways; ropeways; inland waterways and traffic thereon subject to the provisions of List III with regard to such waterways; ports subject to the provisions in List I with regard to major ports; vehicles other than mechanically propelled vehicles.

19. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power.

20. Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases; improvement of stock and prevention of animal diseases; veterinary training and practice; pounds and the prevention of cattle trespass.

21. Land, that is to say, rights in or over land, land tenures, including the relation of landlord and tenant, and the collection of rents; transfer, alienation and devolution of agricultural land; land improvement and agricultural loans; colonization; Courts of Wards; encumbered and attached estates; treasure trove.

22. Forests.

23. Regulation of mines and oilfields and mineral development subject to the provisions of List I with respect to regulation and development under Federal control.

24. Fisheries.

25. Protection of wild birds and wild animals.

26. Gas and gasworks.

27. Trade and commerce within the Province; markets and fairs; money lending and money lenders.

28. Inns and innkeepers.

29. Production, supply and distribution of goods; development of industries, subject to the provisions in List I with respect to the development of certain industries under Federal control.

30. Adulteration of foodstuffs and other goods; weights and measures.

31. Intoxicating liquors and narcotic drugs, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors, opium and other narcotic drugs, but subject, as respects opium, to the provisions of List I and, as respects poison and dangerous drugs, to the provisions of List III.

32. Relief of the poor; unemployment.

33. The incorporation, regulation, and winding-up of corporations other than corporations specified in List I; unincorporated trading,

literary, scientific, religious and other societies and associations; co-operative societies.

34. Charities and charitable institutions; charitable and religious endowments.

35. Theatres, dramatic performances and cinemas, but not including the sanction of cinematograph films for exhibition.

36. Betting and gambling.

37. Offences against laws with respect of any of the matters in this list.

38. Inquiries and statistics for the purpose of any of the matters in this list.

39. Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenue.

40. Duties of excise on the following goods manufactured or produced in the Province and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India—

(a) alcoholic liquors for human consumption;

(b) opium, Indian hemp and other narcotic drugs and narcotics; non-narcotic drugs;

(c) medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.

41. Taxes on agricultural income.

42. Taxes on lands and buildings, hearths and windows.

43. Duties in respect of succession to agricultural land.

44. Taxes on mineral rights, subject to any limitations imposed by any Act of the Federal Legislature relating to mineral development.

45. Capitation taxes.

46. Taxes on professions, trades, callings and employments.

47. Taxes on animals and boats.

48. Taxes on the sale of goods and on advertisements.

49. Cesses on the entry of goods into a local area for consumption, use or sale therein.

50. Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.

51. The rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty.

52. Dues on passengers and goods carried on inland waterways.

53. Tolls

54. Fees in respect of any of the matters in this list, but not including fees taken in any Court.

LIST III.

CONCURRENT LEGISLATIVE LIST.

— PART I.

1. Criminal law, including all matters included in the Indian Penal Code at the date of the passing of this Act, but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of His Majesty's naval, military and air forces in aid of the civil power.

2. Criminal Procedure, including all matters included in the Code of Criminal Procedure at the date of the passing of this Act.

3. Removal of prisoners and accused persons from one unit to another unit.

4. Civil Procedure, including the law of Limitation and all matters included in the Code of Civil Procedure at the date of the passing of this Act; the recovery in a Governor's Province or a Chief Commissioner's Province of claims in respect of taxes and other public demands, including arrears of land revenue and sums recoverable as such, arising outside that Province.

5. Evidence and oaths; recognition of laws, public acts and records and judicial proceedings.

6. Marriage and divorce; infants and minors; adoption.

7. Wills, intestacy, and succession, save as regards agricultural land.

8. Transfer of property other than agricultural land; registration of deeds and documents.

9. Trusts and Trustees.
10. Contracts, including partnership, agency, contracts of carriage, and other special forms of contract, but not including contracts relating to agricultural land.
11. Arbitration.
12. Bankruptcy and insolvency; administrators-general and official trustees.
13. Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty.
14. Actionable wrongs, save in so far as included in laws with respect to any of the matters specified in List I or II.
15. Jurisdiction and powers of all courts except the Federal Court, with respect to any of the matters in this list.
16. Legal, medical and other professions.
17. Newspapers, books, and printing presses.
18. Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficient.
19. Poisons and dangerous drugs.
20. Mechanically propelled vehicles.
21. Boilers.
22. Prevention of cruelty to animals.
23. European vagrancy; criminal tribes.
24. Inquiries and statistics for the purpose of any of the matters in this Part of this List.
25. Fees in respect of any of the matters in this Part of this List, but not including fees taken in any Court.

PART II.

26. Factories.
27. Welfare of labour; conditions of labour; provident funds; employers' liability and workmen's compensation; health insurance; including invalidity pensions; old age pensions.
28. Unemployment insurance.
29. Trade unions; industrial and labour disputes.

30. The prevention of the extension from one unit to another of infectious or contagious diseases or pests affecting men, animals or plants.

31. Electricity.

32. Shipping and navigation on inland waterways as regards mechanically propelled vessels, and the rule of the road on such waterways; carriage of passengers and goods on inland waterways.

33. The sanctioning of cinematograph films for exhibition.

34. Persons subjected to preventive detention under Federal authority.

35. Inquiries and statistics for the purpose of any of the matters in this Part of this List.

36. Fees in respect of any of the matters in this Part of this List, but not including fees taken in any Court.

EIGHTH SCHEDULE.

THE FEDERAL RAILWAY AUTHORITY.

1. The Federal Railway Authority, which shall be a body corporate by, and may sue and be sued in, that name, (in this Schedule referred to as "the Authority") shall consist of seven persons to be appointed by the Governor-General.

2. A person shall not be qualified to be appointed or to be a member of the Authority—

(a) unless he has had experience in commerce, industry, agriculture, finance, or administration; or

(b) if he is, or within the twelve months last preceding has been;

(i) a member of the Federal or any Provincial Legislature; or

(ii) in the service of the Crown in India; or

(iii) a railway official in India.

3. Of the first members of the Authority, three shall be appointed for three years and any of those members shall at the expiration of his original term of office be eligible for re-appointment for a further term of three years, or five years.

Subject as aforesaid, a member of the Authority shall be appointed for five years and shall at the expiration of his original term of office be eligible for re-appointment for a further term not exceeding five years.

The Governor-General, exercising his individual judgment, may terminate the appointment of any member if satisfied that that member is for any reason unable or unfit to continue to perform the duties of his office.

4. The Governor-General, exercising his individual judgment, may make rules providing for the appointment of temporary members to act in place of any members temporarily unable to perform the duties of their office.

5. A member of the Authority shall be entitled to receive such salary and allowances as the Governor-General, exercising his individual judgment, may determine:

Provided that the emoluments of a member shall not be reduced during his term of office.

6. All acts of the Authority and all questions before them shall be done and decided by a majority of the members present and voting at a meeting of the Authority.

In the case of an equality of votes at any meeting, the person presiding thereat shall have a second or casting vote.

7. If a member of the Authority is or becomes the holder of or tenders for any contract for the supply of materials to, or the execution of works for, any railway in India, or is or becomes concerned in the management of any company holding or tendering for such a contract as aforesaid, he shall forthwith make full disclosure of the facts to the Authority and shall not take part in the consideration or discussion of, or vote on, any question with respect to the contract.

8. At any meeting of the Authority a person or persons deputed by the Governor-General to represent him may attend and speak, but not vote.

9. Subject to the provisions of this Act, the Authority may make standing orders for the regulation of their proceedings and business, and may vary or revoke any such order.

10. The proceedings of the Authority shall not be invalidated by any vacancy among their number, or by any defect in the appointment or qualification of any member.

11. At the head of the executive staff of the Authority there shall be a chief railway commissioner, being a person with experience in Railway administration, who shall be appointed by the Governor-General, exercising his individual judgment, after consultation with the Authority.

12. The chief railway commissioner shall be assisted in the performance of his duties by a financial commissioner, who shall be appointed by the Governor-General, and by such additional commissioners, being persons with experience in railway administration, as the Authority on the recommendation of the chief railway commissioner may appoint.

13. The chief railway commissioner shall not be removed from office except by the Authority and with the approval of the Governor-General, exercising his individual judgment, and the financial commissioner shall not be removed from office except by the Governor-General, exercising his individual judgment.

14. The chief railway commissioner and the financial commissioner shall have the right to attend any meeting of the Authority, and the financial commissioner shall have the right to require any matter which relates to, or affects, finance to be referred to the Authority.

15. The Authority shall not be liable to pay Indian income tax or supertax on any of its income, profits or gains.

16. The Authority shall entrust all their money which is not immediately needed to the Reserve Bank of India and employ that bank as their agents for all transactions in India relating to remittances, exchange and banking, and the bank shall undertake the custody of such moneys and such agency transactions on the same terms and conditions as those upon which they undertake the custody of moneys belonging to, or agency transactions for, the Federal Government.

NINTH SCHEDULE.

PROVISIONS OF GOVERNMENT OF INDIA ACT CONTINUED IN FORCE WITH
AMENDMENTS UNTIL THE ESTABLISHMENT OF THE FEDERATION.

The Governor-General's Executive Council.

36.—(1) The members of the Governor-General's Executive Council shall be appointed by His Majesty by warrant under the Royal Sign Manual. Members of Council.

(2) The number of the members of the Council shall be such as His Majesty thinks fit to appoint.

(3) Three at least of them must be persons who have been for at least ten years in the service of the Crown in India, and one must be a barrister of England or Ireland, or a member of the Faculty of Advocates of Scotland, or a pleader of a high court, of not less than ten years' standing.

(4) If any member of the Council (other than the Commander-in-Chief for the time being of His Majesty's forces in India) is at the time of his appointment in the military service of the Crown, he shall not, during his continuance in office as such member, hold any military command or be employed in actual military duties.

(5) Provision may be made by rules under this Act as to the qualifications to be required in respect of the members of the Governor-General's Executive Council, in any case where such provision is not made by the foregoing provisions of this section.

Rank and
precedence
of Com-
mander-in-
Chief.

37. If the Commander-in-Chief for the time being of His Majesty's forces in India is a member of the Governor-General's Executive Council, he shall, subject to the provisions of this Act, have rank and precedence in the Council next after the Governor-General.

Vice-Presi-
dent of
Council.

38. The Governor-General shall appoint a member of his Executive Council to be vice-president thereof.

Meetings.

39.—(1) The Governor-General's Executive Council shall assemble at such places in India as the Governor-General in Council appoints.

(2) At any meeting of the Council the Governor-General or other person presiding and one member of the Council (other than the Commander-in-Chief) may exercise all the functions of the Governor-General in Council.

Business of
Governor-
General in
Council.

40.—(1) All orders and other proceedings of the Governor-General in Council shall be expressed to be made by the Governor-General in Council, and shall be signed by a secretary to the Government of India, or otherwise as the Governor-General in Council may direct, and, when so signed, shall not be called into question in any legal proceeding on the ground that they were not duly made by the Governor-General in Council.

(2) The Governor-General may make rules and orders for the more convenient transaction of business in his Executive Council, and every

order made or act done, in accordance with such rules and orders, shall be treated as being the order or the act of the Governor-General in Council.

41.—(1) If any difference of opinion arises on any question brought before a meeting of the Governor-General's Executive Council, the Governor-General in Council shall be bound by the opinion and decision of the majority of those present, and, if they are equally divided, the Governor-General or other person presiding shall have a second or casting vote.

Procedure
in case of
difference
of opinion.

(2) Provided that, whenever any measure is proposed before the Governor-General in Council whereby the safety, tranquillity or interests of British India, or of any part thereof, are or may be, in the judgment of the Governor-General, essentially affected, and he is of opinion either that the measure proposed ought to be adopted and carried into execution, or that it ought to be suspended or rejected, and the majority present at a meeting of the Council dissent from that opinion, the Governor-General may, on his own authority and responsibility, adopt, suspend or reject the measure, in whole or in part.

(3) In every such case any two members of the dissentient majority may require that the adoption, suspension or rejection of the measure, and the fact of their dissent, be reported to the Secretary of State, and the report shall be accompanied by copies of any minutes which the members of the Council have recorded on the subject.

(4) Nothing in this section shall empower the Governor-General to do anything which he could not lawfully have done with the concurrence of his Council.

42. If the Governor-General is obliged to absent himself from any meeting of the Council, by indisposition or any other cause, the vice-president, or, if he is absent, the senior member (other than the Commander-in-Chief) present at the meeting, shall preside thereat, with the like powers as the Governor-General would have had if present :

Provisions
for absence
of Governor
General
from meet-
ings of
Council.

Provided that, if the Governor-General is at the time resident at the place where the meeting is assembled, and is not prevented by indisposition from signing any act of Council made at the meeting, the act shall require his signature; but, if he declines or refuses to sign it, the like provisions shall have effect as in cases where the Governor-General, when present, dissents from the majority at a meeting of the Council.

Powers of
Governor-
General in
absence
from
Council.

43.—(1) Whenever the Governor-General in Council declares that it is expedient that the Governor-General should visit any part of India unaccompanied by his Executive Council, the Governor-General in Council may, by order, authorize the Governor-General alone to exercise, in his discretion, all or any of the powers which might be exercised by the Governor-General in Council at meetings of the Council.

The Indian Legislature.

Indian
legislature.

63. Subject to the provisions of this Act, the Indian legislature shall consist of the Governor-General and two chambers, namely, the Council of State and the Legislative Assembly.

Except as otherwise provided by or under this Act, a Bill shall not be deemed to have been passed by the Indian legislature unless it has been agreed to by both chambers, either without amendment or with such amendments only as may be agreed to by both chambers.

Council of
State.

63A.—(1) The Council of State shall consist of not more than sixty members nominated or elected in accordance with rules made under this Act, of whom not more than twenty shall be official members.

(2) The Governor-General shall have power to appoint, from among the members of the Council of State, a president and other persons to preside in such circumstances as he may direct.

(3) The Governor-General shall have the right of addressing the Council of State, and may for that purpose require the attendance of its members.

Legislative
Assembly.

63B.—(1) The Legislative Assembly shall consist of members nominated or elected in accordance with rules made under this Act.

(2) The total number of members of the Legislative Assembly shall be one hundred and forty. The number of non-elected members shall be forty, of whom twenty-six shall be official members. The number of elected members shall be one hundred:

Provided that rules made under this Act may provide for increasing the number of members of the Legislative Assembly as fixed by this section, and may vary the proportion which the classes of members bear one to another, so, however, that at least five-sevenths of the members of the Legislative Assembly shall be elected members, and at least one-third of the other members shall be non-official members.

(3) The Governor-General shall have the right of addressing the Legislative Assembly, and may for that purpose require the attendance of its members.

63C.—(1) There shall be a president of the Legislative Assembly. ^{President of} ~~Legislative~~ ^{Assembly.} who shall be a member of the Assembly elected by the Assembly and approved by the Governor-General.

(2) There shall be a deputy president of the Legislative Assembly, who shall preside at meetings of the Assembly in the absence of the president, and who shall be a member of the Assembly elected by the Assembly and approved by the Governor-General.

(3) A president and a deputy president shall cease to hold office if they cease to be members of the Assembly. They may resign office by writing under their hands addressed to the Governor-General, and may be removed from office by a vote of the Assembly with the concurrence of the Governor-General.

(4) A president and deputy-president shall receive such salaries as may be determined by Act of the Indian Legislature.

63D.—(1) Every Council of State shall continue for five years and every Legislative Assembly for three years, from its first meeting :

Provided that—

- (a) either chamber of the legislature may be sooner dissolved by the Governor-General; and
- (b) any such period may be extended by the Governor-General if in special circumstances he so thinks fit; and
- (c) after the dissolution of either chamber the Governor-General shall appoint a date not more than six months, or, with the sanction of the Secretary of State, not more than nine months, after the date of dissolution for the next session of that chamber.

(2) The Governor-General may appoint such times and places for holding the sessions of either chamber of the Indian legislature as he thinks fit, and may also from time to time, by notification or otherwise, prorogue such sessions.

(3) Any meeting of either chamber of the Indian legislature may be adjourned by the person presiding.

(4) All questions in either chamber shall be determined by a majority of votes of members present other than the presiding member, who shall, however, have and exercise a casting vote in the case of an equality of votes.

(5) The powers of either chamber of the Indian legislature may be exercised notwithstanding any vacancy in the chamber.

Member-
ship of both
chambers.

63E.—(1) An official shall not be qualified for election as a member of either chamber of the Indian legislature, and, if any non-official member of either chamber accepts office in the service of the Crown in India, his seat in that chamber shall become vacant.

(2) If an elected member of either chamber of the Indian legislature becomes a member of the other chamber, his seat in such first-mentioned chamber shall thereupon become vacant.

(3) If any person is elected a member of both chambers of the Indian legislature, he shall, before he takes his seat in either chamber, signify in writing the chamber of which he desires to be a member, and thereupon his seat in the other chamber shall become vacant.

(4) Every member of the Governor-General's Executive Council shall be nominated as a member of one chamber of the Indian legislature, and shall have the right of attending in and addressing the other chamber, but shall not be a member of both chambers.

Supple-
mentary
provisions
as to com-
position of
Legislative
Assembly
and Council
of State.

64.—(1) Subject to the provisions of this Act, provision may be made by rules under this Act as to—

- (a) the term of office of nominated members of the Council of State and the Legislative Assembly, and the manner of filling casual vacancies occurring by reason of absence of members from India, inability to attend to duty, death, acceptance of office, or resignation duly accepted, or otherwise; and
- (b) the conditions under which and the manner in which persons may be nominated as members of the Council of State or the Legislative Assembly; and
- (c) the qualification of electors, the constitution of constituencies, and the method of election for the Council of State and the Legislative Assembly (including the number of members to be elected by communal and other electorates) and any matter in-

cidental or ancillary thereto; and

(d) the qualifications for being or for being nominated or elected as members of the Council of State or the Legislative Assembly; and

(e) the final decision of doubts or disputes as to the validity of an election; and

(f) the manner in which the rules are to be carried into effect.

(2) Subject to any such rules, any person who is a ruler or subject of any state in India may be nominated as a member of the Council of State or the Legislative Assembly.

67—(1) Provision may be made by rules under this Act for regulating the course of business and the preservation of order in the chambers of the Indian legislature, and as to the persons to preside at the meetings of the Legislative Assembly in the absence of the president and the deputy-president; and the rules may provide for the number of members required to constitute a quorum, and for prohibiting or regulating the asking of questions on, and the discussion of, any subject specified in the rules.

Business and proceedings in Indian legislature.

(2A) Where in either chamber of the Indian legislature any Bill has been introduced, or is proposed to be introduced, or any amendment to a Bill is moved, or proposed to be moved, the Governor-General may certify that the Bill, or any clause of it, or the amendment, affects the safety or tranquillity of British India or any part thereof, and may direct that no proceedings, or that no further proceedings, shall be taken by the chamber in relation to the Bill clause, or amendment, and effect shall be given to such direction.

(3) If any Bill which has been passed by one chamber is not, within six months after the passage of the Bill by that chamber, passed by the other chamber either without amendments or with such amendments as may be agreed to by the two chambers, the Governor-General may in his discretion refer the matter for decision to a joint sitting of both chambers: Provided that standing orders made under this section may provide for meetings of members of both chambers appointed for the purpose, in order to discuss any difference of opinion which has arisen between the two chambers.

(4) Without prejudice to the powers of the Governor-General under section sixty-eight of this Act, the Governor-General may, where a Bill

has been passed by both chambers of the Indian legislature, return the Bill for reconsideration by either chamber.

(5) Rules made for the purpose of this section may contain such general and supplemental provisions as appear necessary for the purpose of giving full effect to this section.

(6) Standing orders may be made providing for the conduct of business and the procedure to be followed in either chamber of the Indian legislature in so far as these matters are not provided for by rules made under this Act. The first standing orders shall be made by the Governor-General in Council, but may, with the consent of the Governor-General, be altered by the chamber to which they relate.

Any standing order made as aforesaid which is repugnant to the provisions of any rules made under this Act shall, to the extent of that repugnancy but not otherwise, be void.

(7) Subject to the rules and standing orders affecting the chamber, there shall be freedom of speech in both chambers of the Indian legislature. No person shall be liable to any proceedings in any court by reason of his speech or vote in either chamber, or by reason of anything contained in any official report of the proceedings of either chamber.

Indian
Budget,

67A.—(1) The estimated annual expenditure and revenue of the Governor-General in Council shall be laid in the form of a statement before both Chambers of the Indian legislature in each year.

(2) No proposal for the appropriation of any revenue or moneys for any purpose shall be made except on the recommendation of the Governor-General.

(3) The proposals of the Governor-General in Council for the appropriation of revenue or moneys relating to the following heads of expenditure shall not be submitted to the vote of the Legislative Assembly nor shall they be open to discussion by either chamber at the time when the annual statement is under consideration unless the Governor-General otherwise directs:—

(i) interest and sinking fund charges on loans; and

(ii) expenditure of which the amount is prescribed by or under any law; and

(iii) salaries (including in the case of the Governor-General sums payable on his account in respect of his office) and pensions payable to or to the dependants of—

(a) persons appointed by or with the approval of His Majesty;

(b) Chief Commissioners and Judicial Commissioners; and

(iv) any grants for purposes connected with the administration of any areas in a Province which are for the time being Excluded Areas; and

(v) the sums payable to His Majesty under the Government of India Act, 1935, in respect of the expenses of His Majesty incurred in discharging the functions of the Crown in relation to Indian States; and

(vi) expenditure classified by the order of the Governor-General in Council as—

(a) ecclesiastical;

(b) external affairs;

(c) defence; or

(d) relating to tribal areas.

(vii) Expenditure of the Governor-General in discharging functions as respects matters with respect to which he is required by the provisions of the Government of India Act, 1935, for the time being in force to act in his discretion;

(viii) any other expenditure declared by the provisions of the Government of India Act, 1935, for the time being in force to be charged on the revenues of the Federation.

(4) If any question arises as to whether any proposed appropriation of revenue or moneys does or does not relate to the above heads, the decision of the Governor-General on the question shall be final.

(5) The proposals of the Governor-General in Council for the appropriation of revenue or moneys relating to heads of expenditure not specified in the above heads shall be submitted to the vote of the Legislative Assembly in the form of demands for grants.

(6) The Legislative Assembly may assent or refuse its assent to any demand or may reduce the amount referred to in any demand by a reduction of the whole grant.

(7) The demands as voted by the Legislative Assembly shall be submitted to the Governor-General in Council, who shall, if he declares that he is satisfied that any demand which has been refused by the Legislative Assembly is essential to the discharge of his responsibilities, act as if it had been assented to, notwithstanding the withholding of such assent, or the reduction of the amount therein referred to, by the Legislative Assembly.

(8) Notwithstanding anything in this section, the Governor-General shall have power, in cases of emergency, to authorise such expenditure as may, in his opinion, be necessary for the safety or tranquillity of British India or any part thereof.

Provisions
for case of
failure to
pass legisla-
tion.

67B.—(1) Where either chamber of the Indian legislature refuses leave to introduce, or fails to pass in a form recommended by the Governor-General, any Bill, the Governor-General may certify that the passage of the Bill is essential for the safety, tranquillity or interests of British India or any part thereof, and thereupon—

(a) if the Bill has already been passed by the other chamber, the Bill shall, on signature by the Governor-General, notwithstanding that it has not been consented to by both chambers, forthwith become an Act of the Indian legislature in the form of the Bill as originally introduced or proposed to be introduced in the Indian legislature, or (as the case may be) in the form recommended by the Governor-General; and

(b) if the Bill has not already been so passed, the Bill shall be laid before the other chamber, and, if consented to by that chamber in the form recommended by the Governor-General, shall become an Act as aforesaid on the signification of the Governor-General's assent, or, if not so consented to, shall, on signature by the Governor-General, become an Act as aforesaid.

(2) Every such Act shall be expressed to be made by the Governor-General, and shall, as soon as practicable after being made, be laid before both Houses of Parliament, and shall not have effect until it has received His Majesty's assent, and shall not be presented for His Majesty's assent until copies thereof have been laid before each House of Parliament for not less than eight days on which that House has sat; and upon the signification of such assent by His Majesty in Council, and the notification

thereof by the Governor-General, the Act shall have the same force and effect as an Act passed by the Indian legislature and duly assented to :

Provided that, where in the opinion of the Governor-General a state of emergency exists which justifies such action, the Governor-General may direct that any such Act shall come into operation forthwith, and thereupon the Act shall have such force and effect as aforesaid, subject, however, to disallowance by His Majesty in Council.

68.—(1) When a Bill has been passed by both chambers of the Indian legislature, the Governor-General may declare that he assents to the Bill, or that he withholds assent from the Bill, or that he reserves the Bill for the signification of His Majesty's pleasure thereon. Assent of Governor-General to Bills.

(2) A Bill passed by both chambers of the Indian legislature shall not become an Act until the Governor-General has declared his assent thereto, or, in the case of a Bill reserved for the signification of His Majesty's pleasure, until His Majesty in Council has signified his assent and that assent has been notified by the Governor-General.

69.—(1) When an Act of the Indian legislature has been assented to by the Governor-General, he shall send to the Secretary of State an authentic copy thereof, and it shall be lawful for His Majesty in Council to signify his disallowance of any such Act. Power of Crown to disallow Acts.

(2) Where the disallowance of any such Act has been so signified, the Governor-General shall forthwith notify the disallowance, and thereupon the Act, as from the date of the notification, shall become void accordingly.

72. The Governor-General may, in cases of emergency, make and promulgate ordinances for the peace and good government of British India or any part thereof, and any ordinance so made shall, for the space of not more than six months from its promulgation, have the like force of law as an Act passed by the Indian legislature; but the power of making ordinances under this section is subject to the like restrictions as the power of the Indian legislature to make laws; and any ordinance made under this section is subject to the like disallowance as an Act passed by the Indian legislature, and may be controlled or superseded by any such Act. Power to make ordinances in cases of emergency.

Salaries, leave of absence, vacation of office, etc.

85.—(1) There shall be paid to the Governor-General of India, to the Commander-in-Chief of His Majesty's Forces in India and to the Salaries and allowances

of Governor-General and certain other officials in India.

members of the Governor-General's Executive Council (other than the Commander-in-Chief), out of the revenues of the Governor-General in Council, such salaries and such allowances (if any) for equipment and voyage as the Secretary of State may by order fix in that behalf and subject to or in default of any such order as are payable at the commencement of Part III of the Government of India Act, 1935; but the salary of the Governor-General shall not exceed two hundred and fifty-six thousand rupees annually, the salary of the Commander-in-Chief shall not exceed one hundred thousand rupees annually and the salary of members of the Governor-General's Executive Council (other than the Commander-in-Chief) shall not exceed eighty thousand rupees annually.

(2) Provided as follows:—

- (a) the Secretary of State shall not make any Order affecting salaries of members of the Governor-General's Executive Council except after consulting his advisers and with the concurrence of at least one-half of them;
- (b) if any person to whom this section applies holds or enjoys any pension or salary or any office or profit under the Crown or under any public office, his salary under this section shall be reduced by the amount of the pension, salary or profits of office so held or enjoyed by him;
- (c) nothing in the provisions of this section with respect to allowances shall authorise the imposition of any additional charge on the revenues of the Governor-General in Council.

(3) The remuneration payable to a person under this section shall commence on his taking upon himself the execution of his office and shall be the whole profit or advantage which he shall enjoy from his office during his continuance therein:

Provided that nothing in this section shall apply to the allowances or other forms of profit and advantage which may have been sanctioned for such persons before the commencement of Part III of the Government of India Act, 1935, by the Secretary of State in Council or may thereafter be sanctioned by the Secretary of State.

86.—(1) The Secretary of State may grant to the Governor-General and, on the recommendation of the Governor-General in Council, to the Commander-in-Chief, leave of absence for urgent reasons of public interest, or of health or of private affairs.

Power to grant leave of absence to Governor-General, &c.

(2) The Governor-General in Council may grant to any member of his Executive Council (other than the Commander-in-Chief) leave of absence for urgent reasons of health or of private affairs.

(3) Leave of absence shall not be granted to any person in pursuance of this section for any period exceeding four months nor more than once during his tenure of office :

Provided that the Secretary of State may, if he thinks fit extend any period of leave so granted, but in any such case the reasons for the extension shall be set forth in a minute signed by the Secretary of State and laid before both Houses of Parliament.

(4) Where leave of absence is granted to any person in pursuance of this section, he shall retain his office during the period of leave as originally granted, or, if that period is extended by the Secretary of State during the period as so extended, but, if his absence exceeds that period, his office shall be deemed to have become vacant in the case of a person granted leave for urgent reasons of public interest as from the termination of that period and in any other case as from the commencement of his absence.

(5) Where a person obtains leave of absence in pursuance of this section, he shall be entitled to receive during his absence such leave-allowances as may be prescribed by rules made by the Secretary of State, but, if he does not resume his duties upon the termination of the period of the leave, he shall, unless the Secretary of State otherwise directs, repay, in such manner as may be so prescribed as aforesaid, any leave-allowances received under this sub-section.

(6) If the Governor-General or the Commander-in-Chief is granted leave for urgent reasons of public interest, the Secretary of State may, in addition to the leave-allowances to which he is entitled under this section, grant to him such further allowances in respect of travelling expenses as the Secretary of State may think fit.

(7) Rules made under this section shall be laid before both Houses of Parliament as soon as may be after they are made.

87.—(1) Where leave is granted in pursuance of the foregoing section to the Governor-General or to the Commander-in-Chief, a person shall be appointed to act in his place during his absence, and the appointment shall be made by His Majesty by warrant under the Royal Sign

Acting appointments during the absence of the Governor-General &c., on leave.

Manual. The person so appointed during the absence of the Commander-in-Chief may, if the Commander-in-Chief was a member of the Executive Council of the Governor-General, be also appointed by the Governor-General in Council to be a temporary member of that Council.

(2) The person so appointed shall, until the return to duty of the permanent holder of the office, or, if he does not return, until a successor arrives, hold and execute the office to which he has been appointed and shall have and may exercise all the rights and powers thereof and shall be entitled to receive the emoluments and advantages appertaining to the office, foregoing the emoluments and advantages (if any) to which he was entitled at the time of his being appointed to that office.

Power for Governor-General to exercise powers before taking seat.

89.—(1) If any person appointed to the office of Governor-General is in India on or after the event on which he is to succeed, and thinks it necessary to exercise the powers of Governor-General before he takes his seat in Council, he may make known by notification his appointment and his intention to assume the office of Governor-General.

(2) After the notification, and thenceforth until he repairs to the place where the Council may assemble, he may exercise alone all or any of the powers which might be exercised by the Governor-General in Council.

(3) All acts done in the Council after the date of the notification, but before the communication thereof to the Council, shall be valid, subject, nevertheless, to revocation or alteration by the person who has so assumed the office of Governor-General.

(4) When the office of Governor-General is assumed under the foregoing provision, the vice-president, or, if he is absent, the senior member of the council (other than the Commander-in-Chief) then present, shall preside therein, with the same powers as the Governor-General would have had if present.

Temporary vacancy in office of Governor-General.

90.—(1) If a vacancy occurs in the office of Governor-General when there is no successor in India to supply the vacancy, that one of the following governors, that is to say, the Governor of Madras, the Governor of Bombay, and the Governor of Bengal, who was first appointed to the office of governor by His Majesty shall hold and execute the office of Governor-General until a successor arrives or until some person in India is duly appointed thereto.

(2) Every such acting Governor-General while acting as such, shall have and may exercise all the rights and powers of the office of Governor-General, and shall be entitled to receive the emoluments and advantages appertaining to the office, forgoing the salary and allowances, appertaining to his office of Governor, and shall not act in his office of Governor.

(3) If, on the vacancy occurring, it appears to the Governor, who by virtue of this section holds and executes the office of Governor-General, necessary to exercise the powers thereof before he takes his seat in Council, he may make known by notification his appointment, and his intention to assume the office of Governor-General, and thereupon the provisions of section eighty-nine of this Act shall apply.

(4) Until such a governor has assumed the office of Governor-General, if no successor is on the spot to supply such vacancy, the vice-president, or, if he is absent, the senior member of the Executive Council (other than the Commander-in-Chief) shall hold and execute the office of Governor-General until the vacancy is filled in accordance with the provisions of this Act.

(5) Every vice-president or other member of Council so acting as Governor-General, while so acting, shall have and may exercise all the rights and powers of the office of Governor-General, and shall be entitled to receive the emoluments and advantages appertaining to the office, forgoing his salary and allowances as member of Council for that period.

92.—(1) If a vacancy occurs in the office of a member of the Executive Council of the Governor-General (other than the Commander-in-Chief), and there is no successor present on the spot, the Governor-General in Council shall supply the vacancy by appointing a temporary member of council.

Temporary
vacancy in
office of
member of
the Execu-
tive Council

(2) Until a successor arrives, the person so appointed shall hold and execute the office to which he has been appointed, and shall have and may exercise all the rights and powers thereof, and shall be entitled to receive the emoluments and advantages appertaining to the office, forgoing all emoluments and advantages to which he was entitled at the time of his being appointed to that office.

(3) If a member of the Executive Council of the Governor-General (other than the Commander-in-Chief) is, by infirmity or otherwise, rendered incapable of acting or of attending to act as such, or is absent

on leave or special duty, the Governor-General in Council shall appoint some person to be a temporary member of council.

(4) Until the return to duty of the member so incapable or absent, the person temporarily appointed shall hold and execute the office to which he has been appointed, and shall have and may exercise all the rights and powers thereof, and shall be entitled to receive the emoluments and advantages appertaining to the office, forgoing the emoluments and advantages (if any) to which he was entitled at the time of his being appointed to that office.

(4A) When a member of the Executive Council is by infirmity or otherwise rendered incapable of acting or attending to act as such and a temporary member of council is appointed in his place, the absent member shall be entitled to receive half his salary for the period of his absence.

(5) Provided as follows:—

- (a) no person may be appointed a temporary member of council who might not have been appointed to fill the vacancy supplied by the temporary appointment; and
- (b) if the Secretary of State informs the Governor-General that it is not the intention of His Majesty to fill a vacancy in the Governor-General's Executive Council, no temporary appointment may be made under this section to fill the vacancy, and, if any such temporary appointment has been made before the date of the receipt of the information by the Governor-General, the tenure of the person temporarily appointed shall cease from that date.

Vacancies
in legisla-
tive
councils.

93.—(1) A nominated or elected member of either chamber of the Indian legislature may resign his office to the Governor-General, and on the acceptance of the resignation the office shall become vacant.

(2) If for a period of two consecutive months any such member is absent from India or unable to attend to the duties of his office the Governor-General may, by notification published in the government gazette, declare that the seat in council of that members has become vacant.

Supplemental.

Provisions
as to rules.

129A.—(1) Where any matter is required to be prescribed or regulated by rules under this Act, and no special provision is made as to the

authority by whom the rules are to be made, the rules shall be made by the Governor-General in Council, with the sanction of the Secretary of State, and shall not be subject to repeal or alteration by any legislature in India.

(2) Any rules made under this Act may be so framed as to make different provision for different provinces.

(3) Any rules to which sub-section (1) of this section applies shall be laid before both Houses of Parliament as soon as may be after they are made, and, if an address is presented to His Majesty by either House of Parliament within the next thirty days on which that House has sat after the rules are laid before it praying that the rules or any of them may be annulled, His Majesty in Council may annul the rules or any of them and those rules shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder :

Provided that the Secretary of State may direct that any rules to which this section applies shall be laid in draft before both Houses of Parliament, and in such case the rules shall not be made unless both Houses by resolution approve the draft either without modification or addition or, with modifications and additions to which both Houses agree, but, upon such approval being given, the rules may be made in the form in which they have been approved, and such rules on being so made shall be of full force and effect, and shall not require to be further laid before Parliament.

TENTH SCHEDULE.
ENACTMENTS REPEALED.

Session and Chapter of Act.	Title.	Extent of Repeal.
21 Geo. 3. c. 70	The East India Company Act, 1780.	Section eighteen.
37 Geo. 3. c. 142	The East India Act, 1797.	Section twelve.
16 & 17 Vict. c. 107.	The Customs Consolidation Act, 1853.	Section three hundred and twenty-nine.
23 & 24 Vict. c. 89.	An Act to extend in certain cases the provisions of the Superannuation Act, 1859.	The whole Act.
47 & 48 Vict. c. 38.	The Indian Marine Service Act, 1884.	The whole Act.
56 & 57 Vict. c. 62.	The Madras and Bombay Armies Act, 1893.	The whole Act.
5 & 6 Geo. 5. c. 61.	The Government of India Act, 1915.	The whole Act.
6 & 7 Geo. 5. c. 37.	The Government of India (Amendment) Act, 1916.	The whole Act, except sections six and eight.
9. & 10 Geo. 5. c. 101.	The Government of India Act, 1919.	The whole Act, except the Preamble and subsection (1) of section forty-seven.
12 & 13 Geo. 5. c. 20.	The Indian High Courts Act, 1922.	The whole Act.
14 & 15 Geo. 5. c. 28.	The Government of India (Leave of Absence) Act, 1924.	The whole Act.
15 & 16 Geo. 5. c. 83.	The Government of India (Civil Services) Act, 1925.	The whole Act.

Session and Chapter of Act.	Title.	Extent of Repeal.
17 & 18 Geo. 5. c. 8.	The Government of India (Indian Navy) Act, 1927.	The whole Act, except section two and sub-section (1) of section four.
17 & 18 Geo. 5. c. 24.	The Government of India (Statutory Commission) Act, 1927.	The whole Act.
20 & 21 Geo. 5. c. 2.	The Government of India (Aden) Act, 1929.	The whole Act.
23 & 24 Geo. 5. c. 23.	The Government of India (Amendment) Act, 1933.	The whole Act.
23 & 24 Geo. 5. c. 36.	The Administration of Justice (Miscellaneous Provisions) Act, 1933.	In the First Schedule the words "5 & 6 "Geo. 5. c. 61; The "Government of "India Act; section "one hundred and "twenty-seven.

PART IV

PART IV.
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APPENDIX I.

INDIA

LETTERS PATENT passed under the Great Seal of the Realm constituting the office of Governor-General of India.

Dated 5th March 1937.

GEORGE THE SIXTH by the Grace of God of Great Britain Ireland and of the British Dominions beyond the Seas King Defender of the Faith Emperor of India :

To all to whom these Presents shall come.

GREETING :

WHEREAS by section 3 (1) of the Government of India Act, 1935 (hereinafter referred to as "the Act"), it is enacted that the Governor-General of India is appointed by Us by a Commission under Our Sign Manual :

AND WHEREAS by the Act it is further enacted that the Governor-General has all such powers and duties as are conferred on him by or under the Act and such other powers belonging to Us, not being powers connected with the exercise of the functions of the Crown in its relations with Indian States, as We may be pleased to assign to him :

AND WHEREAS We are minded to make permanent provision for the office of Governor-General of India :

NOW, THEREFORE, We do declare Our Will and Pleasure to be as follows :—

1. We do hereby constitute, order and declare that there shall be a Governor-General of India.

2. And We do hereby authorise and empower our Governor-General in Our name and on Our behalf to grant to any offender convicted in the exercise of its criminal jurisdiction by any Court of Justice within Our territories in India a pardon, either free or subject to such lawful conditions as to him may seem fit.

3. And We do hereby delegate to Our Governor-General authority and power to grant in Our name or on Our behalf Commissions in Our Naval Forces, Our Indian Land Forces and Our Indian Air Force.

4. After Part XIII of, and the Ninth Schedule to, the Act shall have ceased to have effect, one of Our Principal Secretaries of State may grant to Our Governor-General once during his term of office leave of absence from India for urgent reasons of public interest or of health or of private affairs. Such leave of absence shall not exceed four months in duration, unless Our Secretary of State shall see fit to extend the period so granted, in which case he shall set forth the reasons for the extension in a minute to be signed by himself and laid before both Houses of Parliament.

5. And We do hereby require and command all Our officers, civil and military, and all other the inhabitants of Our territories in India to be obedient, aiding and assisting unto Our said Governor-General.

6. And We do hereby reserve to Ourselves, Our heirs and successors, full power and authority from time to time to revoke,

alter or amend these Our Letters Patent as to Us or them shall seem meet.

7. Our Governor-General shall make public in India these Our Letters Patent in such manner as to him may seem fit.

IN WITNESS whereof We have caused these Our Letters to be made Patent. Witness Ourselves at Westminster the Fifth day of March in the First year of Our Reign.

By Warrant under the King's Sign Manual.

Schuster

APPENDIX II.

INDIA

Instructions passed under the Royal Sign Manual and Signet to the Governor-General of India.

Dated 8th March 1937.

GEORGE R. I.

INSTRUCTIONS TO OUR GOVERNOR-GENERAL OF INDIA.

GIVEN at Our Court at Buckingham Palace the Eighth day of March 1937 in the First year of Our Reign.

WHEREAS by Letters Patent bearing date the fifth day of March Nineteen hundred and thirty-seven. We have made permanent provision for the office of Governor-General of India :

AND WHEREAS by those Letters Patent and by the Government of India Act, 1935 (hereinafter called " the Act ") certain powers, functions and authority for the Government of India are declared to be vested in the Governor-General :

AND WHEREAS His late Majesty King George V did before the enactment of the Act issue certain Instructions under His Royal Sign Manual to Our said Governor-General bearing date the fifteenth day of March nineteen hundred and twenty-one, and did subsequently amend the same :

AND WHEREAS the impending commencement of Part III of the Act has rendered it necessary to revoke the said Instructions :

AND WHEREAS without prejudice to the provision in the Act that Our Governor-General shall be under the general control of and comply with such particular directions, if any, as may from time to time be given by Our Secretary of State and to the duty of Our Governor-General to give effect to any Instructions so received, We are minded to make general provision regarding

the manner in which during the operation of the provisions of Part XIII of the Act Our said Governor-General shall execute all things which according to the Act and the said Letters Patent belong to his office and to the trust which we have reposed in him :

NOW, THEREFORE, We do by these Our Instructions under Our Royal Sign Manual hereby revoke the aforesaid Instructions and declare Our pleasure to be as follows :—

A.—INTRODUCTORY.

I. Under these Our Instructions, unless the context otherwise require, the term “Governor-General” shall include every person for the time being acting as Governor-General according to the provisions of the Act.

II. Our Governor-General shall, with all due solemnity, cause Our Commission under Our Royal Sign Manual appointing him to be read and published in the presence of the Chief Justice of India for the time being or, in his absence, other Judge of the Federal Court, and of so many of the members of the Executive Council of Our Governor-General as may conveniently be assembled.

III. Our Governor-General shall take the oath of allegiance and the oath for the due execution of the office of Our Governor-General of India and for the due and impartial administration of justice, in the form hereto appended, which oaths the said Chief Justice or, in his absence, any Judge of the Federal Court, shall, and is hereby required to, tender and administer unto him.

IV. And We do authorise and require Our Governor-General by himself or by any other person to be appointed by him in that behalf to administer to every person appointed by Us or by the Governor-General in Council to be a member of the Governor-General's Executive Council and to every person ap-

pointed by him to be a Chief Commissioner the oaths of allegiance and of office and of secrecy hereto appended.

V. And We do further direct that every person who under these Instructions shall be required to take an oath may make an affirmation in place of an oath if he has any objection to making an oath.

VI. The provisions of the last four preceding paragraphs shall not apply to any person holding office at the date of the commencement of Part III of the Act.

B.—IN REGARD TO THE EXECUTIVE AUTHORITY OF THE
GOVERNOR-GENERAL IN COUNCIL.

VII. It is Our will and pleasure that Our Governor-General shall use all endeavour consistent with the fulfilment of his responsibilities to Us and to Our Parliament for the welfare of Our Indian subjects, that the administration of the matters committed to the charge of Our Governor-General in Council may be conducted in harmony with the wishes of Our said subjects as expressed by their representatives in the Indian Legislature so far as the same shall appear to him to be just and reasonable: and shall so order the administration of his government as to further the policy of the Act for its conversion into a Federation of all India.

C.—IN REGARD TO RELATIONS BETWEEN THE GOVERNOR-
GENERAL IN COUNCIL AND THE PROVINCES.

VIII. Whereas it is expedient for the common good of British India that the authority of Our Governor-General in Council and of the Indian Legislature in those matters which are by law assigned to them should prevail:

And whereas at the same time it is the purpose of the Act

that the Governments and Legislatures of the Provinces should be free in their own sphere to pursue their own policy :

And whereas in the interest of the harmonious co-operation of the several members of the body politic, the Act has empowered Our Governor-General to exercise, at his discretion, certain powers affecting the relations between his Government and the Provinces :

It is Our will and pleasure that Our Governor-General in the exercise of these powers should give unbiased consideration as well to the views of the Governments of the Provinces as to those of his own Government whenever those views are in conflict and, in particular, when it falls to him to exercise his power to issue orders to the Governor of a Province for the purpose of securing that the executive authority of the Governor-General in Council is not impeded or prejudiced, or his power to determine whether Provincial law or Central law shall regulate a matter in the sphere in which both Legislatures have power to make laws.

IX. It is Our desire that Our Governor-General shall by all reasonable means encourage consultation with a view to common action between his Government and the Provinces and between the Provinces themselves. It is further Our will and pleasure that Our Governor-General shall endeavour to secure the co-operation of the Provincial Governments in the maintenance of such Central agencies and institutions for research as may serve to assist the conduct by Provincial Governments of their own affairs.

X. In particular We require Our Governor-General before giving his previous sanction to any legislative proposal which it is proposed to introduce in the Indian Legislature for the imposition or variation of taxes or duties by which the revenues of the provincial Governments are or may be directly affected or for varying the meaning of the expression "agricultural income," or for

alteration of the principles on which under the provisions of the Act moneys are or may be distributed to the Provinces, to ascertain by the method which appears to him best suited to the circumstances of each case the views of those Governments upon the proposal.

XI. Before granting his previous sanction to the introduction into the Indian Legislature of any Bill or amendment wherein it is proposed to authorise the Governor-General in Council to give directions to a Province as to the carrying into execution in that Province of any Act of the Indian Legislature relating to a matter specified in Part II of the Concurrent Legislative List appended to the Act, it is Our will and pleasure that Our Governor-General shall take care to see that the Governments of the Provinces which would be affected by any such measure have been duly consulted upon the proposal, and upon any other proposals which may be contained in any such measure which involve the imposition of expenditure upon the revenues of the Provinces.

XII. In considering whether he shall give his assent to any Provincial law relating to a matter enumerated in the Concurrent Legislative List which has been reserved for his consideration on the ground that it contains provisions repugnant to the provisions of an Act of the Indian Legislature, Our Governor-General, while giving full consideration to the proposals of the Provincial Legislature, shall have due regard to the importance of preserving substantially unimpaired the uniformity of law which the Indian Codes have hitherto embodied.

D.—MATTERS AFFECTING THE LEGISLATURE.

XIII. Without prejudice to the generality of his powers as to reservation of Bills, Our Governor-General shall not assent in Our name, to, but shall reserve for the signification of Our pleasure,

any Bill of any of the classes herein specified, that is to say :—

- (a) any Bill the provisions of which would repeal or be repugnant to the provisions of any Act of Parliament extending to British India ;
- (b) any Bill which in his opinion would, if it became law, so derogate from the powers of the High Court of any Province as to endanger the position which those Courts are by the Act designed to fill ;
- (c) any Bill regarding which he feels doubt whether it does, or does not, offend against the purpose of Chapter III, Part V, or section 299 of the Act ;
- (d) any Bill passed by a Provincial Legislature and reserved for his consideration which would alter the character of the Permanent Settlement.

XIV. It is further Our will and pleasure that in pursuance of the Agreement made between Us and His Exalted Highness the Nizam of Hyderabad as contemplated in Part III of the Act. Our Governor-General in declaring his assent in Our name to any Bill of the Legislature of the Central Provinces and Berar which has been reserved for his consideration, shall declare that his assent to the Bill in its application to Berar has been given by virtue of the Agreement between Us and His Exalted Highness the Nizam.

E.—GENERAL.

XV. And generally Our Governor-General shall do all that in him lies to maintain standards of good administration ; to promote all measures making for moral, social and economic welfare and tending to fit all classes of the population to take their due share in public life ; and to secure amongst all classes and creeds co-operation, goodwill and mutual respect for religious beliefs and sentiments ; and he shall further have regard to this

Instruction in the exercise of the powers by law conferred upon him in relation to matters whether of legislation or of executive government.

XVI. And finally it is Our will and pleasure that Our Governor-General should so exercise the trust reposed in him that the partnership between India and the United Kingdom within Our Empire may be furthered, to the end that India may attain its due place among our Dominions.

XVII. And We do hereby charge Our Governor-General to communicate these Our Instructions to the Members of his Executive Council and to publish the same in such manner as he may think fit.

APPENDIX.

FORM OF OATH OF ALLEGIANCE.

I, _____, do swear that I will be faithful and bear true allegiance to His Majesty, King George the Sixth, Emperor of India, His Heirs and Successors, according to Law.

So help me God.

FORM OF OATH OF OFFICE.

I, _____, do swear that I will well and truly serve Our Sovereign, King George the Sixth, Emperor of India, in the Office of _____, and that I will do right to all manner of people after the laws and usages of India, without fear or favour, affection or ill-will.

So help me God.

FORM OF OATH OF SECRECY FOR EXECUTIVE COUNCILLORS.

I, _____, do swear that I will not directly or indirectly communicate or reveal to any person or persons any matter which shall be brought under my consideration, or shall become known to me as a member of the Governor-General's Executive Council, except as may be required for the due discharge of my duties as such member, or as may be specially permitted by the Governor-General.

So help me God.

APPENDIX III.

Instrument of Instructions to the Governor.

WHEREAS by Letters Patent bearing even date We have made effectual and permanent provision for the Office of Governor of ;

AND WHEREAS by those Letters Patent and by the Act of Parliament passed on _____ and entitled the Government of India Act, 1935 (hereinafter called "the said Act"), certain powers, functions and authority for the government of the Province of _____ are declared to be vested in the Governor as Our Representative :

AND WHEREAS, without prejudice to the provision in the said Act that in certain regards therein specified the Governor shall act according to instructions received from time to time from Our Governor-General, and to the duty of Our Governor to give effect to instructions so received, We are minded to make general provision regarding the due manner in which Our said Governor shall execute all things which, according to the said Act and the said Letters Patent, belong to his Office, and to the trust which We have reposed in him :

AND WHEREAS by the said Act it is provided that the draft of any such Instructions to be issued to a Governor shall be laid by Our Secretary of State before both Houses of Parliament :

AND WHEREAS both Houses of Parliament, having considered the draft laid before them accordingly, have presented to Us an Address praying that Instructions may be issued to Our Governor of _____ in the form which hereinafter follows :

NOW THEREFORE We do by these Our Instructions under Our Sign Manual and Signet declare Our pleasure to be as follows :—

A.—INTRODUCTORY.

I. Under these Our Instructions, unless the context otherwise require, the term "Governor" shall include every person for the time being administering the Office of Governor according to the provisions of Our Letters Patent constituting the said Office.

II. Our Governor for the time being shall, with all due solemnity, cause Our Commission under Our Sign Manual appointing him to be read and published in the presence of the Chief Justice for the time being, or, in his absence, other Judge, of the High Court of the Province.

III. Our said Governor shall take the oath of allegiance and the oath for the due execution of the Office of Our Governor of _____, and for the due and impartial administration of justice in the form hereto appended, which oaths the Chief Justice for the time being, or in his absence any Judge, of the High Court, shall, and he is hereby required to, tender and administer unto him.

IV. And We do authorise and require Our Governor, by himself or by any other person to be authorised by him in that behalf, to administer to every person appointed by him to hold the office as member of the Council of Ministers, the oaths of office and of secrecy hereto appended.

V. And We do further direct that every person who under these Instructions shall be required to take an oath may make an affirmation in place of an oath if he has any objection to making an oath.

VI. And whereas great prejudice may happen to Our service by the absence of Our Governor, he shall not quit India during his term of office without having first obtained leave from

Us under Sign Manual or through one of Our Principal Secretaries of State.

B.—IN REGARD TO THE EXECUTIVE AUTHORITY OF THE PROVINCE.

VII. Our Governor shall do all that in him lies to maintain standards of good administration; to encourage religious toleration, co-operation and goodwill among all classes and creeds; and to promote all measures making for moral, social and economic welfare, and tending to fit all classes of the population to take their due share in the public life and government of the Province.

VIII. In making appointments to his Council of Ministers Our Governor shall use his best endeavours to select his Ministers in the following manner, that is to say, in consultation with the person who in his judgment is likely to command a stable majority in the Legislature to appoint those persons (including so far as practicable members of important minority communities who will best be in a position collectively to command the confidence of the Legislature. But, in so acting, he shall bear constantly in mind the need for fostering a sense of joint responsibility among his Ministers.

IX. In all matters within the scope of the executive authority of the Province, save in relation to functions which he is required by the said Act to exercise in his discretion, Our Governor shall in the exercise of the powers conferred upon him be guided by the advice of his Ministers, unless in his opinion to be guided would be inconsistent with the fulfilment of any of the special responsibilities which are by the said Act committed to him, or with the proper discharge of any of the functions which he is otherwise by the said Act required to exercise on his individual judgment; in any of which cases Our Governor shall, notwithstanding his Ministers' advice, act in exercise of the power

by the said Act conferred upon him in such manner as to his individual judgment seems requisite for the due discharge of the responsibilities and functions aforesaid. But he shall be studious so to exercise his powers as not to enable his Ministers to rely upon his special responsibilities in order to relieve themselves of responsibilities which are properly their own.

X. Our Governor shall interpret his special responsibility for the safeguarding of the legitimate interests of minorities as requiring him to secure, in general, that those racial or religious communities for the members of which special representation is accorded in the Legislature, and those classes of the people committed to his charge who, whether on account of the smallness of their number or their lack of educational or material advantages or from any other cause, cannot as yet fully rely for their welfare upon joint political action in the Legislature, shall not suffer, or have reasonable cause to fear, neglect or oppression. But he shall not regard as entitled to his protection any body of persons by reason only that they share a view on a particular question which has not found favour with the majority.

Further, Our Governor shall interpret the said special responsibility as requiring him to secure a due proportion of appointments in Our Services to the several communities, and so far as there may be in his Province at the date of issue of these Our Instructions an accepted policy in this regard, he shall be guided thereby, unless he is fully satisfied that modification of that policy is essential in the interests of the communities affected or of the welfare of the public.

XI. In the discharge of his special responsibility for the securing to members of the public services of any rights provided for them by or under the said Act and the safeguarding of their legitimate interests Our Governor shall be careful to safeguard the members of Our Services not only in any rights provided for them by or under the said Act or any other law for

the time being in force, but also against any action which, in his judgment, would be inequitable.

XII. The special responsibility of Our Governor for securing in the sphere of executive action any of the purposes which the provisions of Chapter III of Part V of the said Act are designed to secure in relation to legislation shall be construed by him as requiring him to differ from his Ministers if in his individual judgment their advice would have effects of the kind which it is the purpose of the said Chapter to prevent, even though the advice so tendered to him is not in conflict with any specific provision of the said Act.

XIII. Our Governor shall construe his special responsibility for the protection of the rights of any Indian State as requiring him to see that no action shall be taken by his Ministers, and no Bill of the Provincial Legislature shall become law, which would imperil the economic life of any State, or affect prejudicially any right of any State heretofore or hereafter recognised,* whether derived from treaty, grant, usage, sufferance or otherwise, not being a right appertaining to a matter with respect to which, in virtue of the Ruler's Instrument of Accession, the Federal Legislature may make laws for his State and his subjects: and he shall refer to Our Governor-General any questions which may arise as to the existence of any such right.

†XIV. If an Agreement is made with His Exalted Highness the Nizam of Hyderabad as contemplated in Part III of the said Act, Our Governor shall interpret his special responsibility for the safeguarding of the rights of any Indian State as also requiring him in the administration of Berar to have due regard to the commercial and economic interests of the State of Hyderabad.

*The procedure for the determination of the right in case of a dispute rests with the Crown's representative for the conduct of relations with the States.

†This paragraph will be included in the instrument of Instructions to the Governor of the Central Provinces and Berar only.

Further, if Our Governor is at any time of opinion that the policy hitherto in force affords to him no satisfactory guidance in the interpretation of his special responsibility for securing that a reasonable share of the revenues of his Province is expended in or for the benefit of Berar he shall, if he deems it expedient, fortify himself with advice from a body of experienced and unbiased persons whom he may appoint for the purpose of recommending what changes in policy would be suitable and equitable.

XV. In the framing of rules for the regulation of the business of the Provincial Government Our Governor shall ensure that, amongst other provisions for the effective discharge of that business, due provision is made that the Minister in charge of the Finance Department shall be consulted upon any proposal by any other Minister which affects the finances of the Province: and further that no reappropriation within a Grant shall be made by any Department otherwise than after consultation with the Finance Minister; and that in any case in which the Finance Minister does not concur in any such proposal the matter shall be brought for decision before the Council of Ministers.

XVI. Having regard to the powers conferred by the said Act upon Our Secretary of State to appoint persons to Our service if, in his opinion, circumstances arise which render it necessary for him so to do in order to secure efficiency in irrigation, Our Governor shall make it his care to see that he is kept constantly supplied with information as to the conduct of irrigation in his Province in order that he may, if need be, place this information at the disposal of Our Governor-General.

*XVII. Our Governor shall bear constantly in mind the danger to India as a whole of any failure to maintain peace and

*This paragraph will be included in the Instructions to the Governor of the North-West Frontier Province only.

security on the North-West Frontier. He shall, therefore, in the exercise of the executive authority of the Province, constantly have regard to the due discharge of his functions as Agent to Our Governor-General in respect of the tribal areas situate between the frontiers of India and the North-West Frontier Province; and he shall not hesitate to exercise his special responsibility for securing that the due discharge of his functions in respect of such tribal areas is not prejudiced or impeded by any course of action taken with respect to any other matter.

C.—MATTERS AFFECTING THE LEGISLATURE.

XVIII. Our Governor shall not assent in Our name to, but shall reserve for the consideration of Our Governor-General, any Bill of any of the classes herein specified, that is to say:—

- (a) any Bill the provisions of which would repeal or be repugnant to provisions of any Act of Parliament extending to British India;
- (b) any Bill which in his opinion would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is by the said Act designed to fill;
- (c) any Bill which would alter the character of the Permanent Settlement;
- (d) any Bill regarding which he feels doubt whether it does, or does not, offend against the purposes of Chapter III of Part V of the said Act.

*XIX. If an Agreement is made with His Exalted Highness the Nizam of Hyderabad as aforesaid Our Governor in notifying his assent in Our name to any enactment of the Provincial Legislature shall declare that his assent has been given in

*This paragraph will be included in the Instructions to the Governor of the Central Provinces and Berar only.

virtue of the provisions of Part III of the said Act and in pursuance of the agreement between Us and His Exalted Highness the Nizam.

XX. It is Our will that the power vested by the said Act in Our Governor to stay proceedings upon a Bill in the Provincial Legislature in the discharge of his special responsibility for the prevention of grave menace to peace and tranquillity shall not be exercised unless, in his judgment, the public discussion of the Bill would itself endanger peace and tranquillity.

XXI. It is Our will and pleasure that the seats in the Legislative Council to be filled by the nomination of Our Governor shall be so apportioned as in general to redress, so far as may be, inequalities of representation which may have resulted from election, and in particular to secure representation for women and the Scheduled Castes in that Chamber.

APPENDIX IV.

The Government of India (Federal Court) Order, 1937.

AT THE COURT AT BUCKINGHAM PALACE.

The 29th day of July, 1937.

PRESENT,

THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS by sub-section (1) of section two hundred of the Government of India Act, 1935 (hereafter in this Order referred to as "the Act") provision is made for the establishment of a Federal Court consisting of a Chief Justice of India and such number of other Judges as His Majesty may deem necessary, so, however, that (except in the circumstances mentioned in the said sub-section) the number of those other Judges shall not exceed six :

AND WHEREAS by section two hundred and one of the Act the Judges of the Federal Court are to be entitled to such salaries and allowances, including allowances for expenses in respect of equipment and travelling upon appointment, and to such rights in respect of leave and pensions, as may from time to time be fixed by His Majesty in Council :

AND WHEREAS by virtue of the powers vested in him by sub-section (3) of section three hundred and twenty of the Act His Majesty in Council has made provision as to the dates on which certain sections of Chapter 1 of Part IX of the Act (being the chapter which contains the provisions of the Act with respect to the Federal Court) shall come into force, but no such provision has yet been made with respect to section two hundred and fifteen of the Act :

AND WHEREAS a draft of this Order has been laid before

Parliament in accordance with the provisions of sub-section (1) of section three hundred and nine of the Act and an Address has been presented to His Majesty by both Houses of Parliament praying that an Order may be made in the terms of this Order :

NOW, THEREFORE, His Majesty, in the exercise of the said powers and of all other powers enabling him in that behalf is pleased by and with the advice of his Privy Council to order, and it is hereby ordered as follows :—

Introductory.

1.—(1) This Order may be cited as “The Government of India (Federal Court) Order, 1937.”

(2) Paragraph three of this Order shall take effect forthwith, but, save as aforesaid, the provisions of this Order shall come into operation on the first day of October, nineteen hundred and thirty-seven.

2.—(1) In this Order, except where it is otherwise expressly provided or the context otherwise requires—

“Chief Justice” means the Chief Justice of India, but does not include an acting Chief Justice;

“acting Chief Justice” means a Judge appointed under section two hundred and two of the Act to perform the duties of the Chief Justice of India;

“Judge” means a Judge of the Federal Court and includes the Chief Justice, an acting Chief Justice and an acting Judge;

“puisne Judge” includes an acting Chief Justice and an acting puisne Judge;

“High Court” means a court which is a High Court for the purposes of the Act;

“Chartered High Court” means a High Court other than a Chief Court or a Judicial Commissioner’s Court;

“actual service” includes—

- (a) time spent by a Judge on duty as Judge, or in the performance of such other functions as he may at the request of the Governor-General undertake to discharge;
- (b) vacations; and
- (c) joining time on transfer from a High Court to the Federal Court;

“service for pension” includes—

- (a) actual service;
- (b) joining time taken on return from leave out of India;

“service as a Judge in India” means such service rendered either in the Federal Court only or in that Court and in one or more of the High Courts, and “Judge in India” and “service for pension as a Judge in India” shall be construed accordingly;

“term-time” means any part of the year not included in a vacation;

“vacation” means a vacation fixed by or under Rules of Court made with the approval of the Governor-General in his discretion under section two hundred and fourteen of the Act.

(2) The Interpretation Act, 1889, applies for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

3. The provisions of section two hundred and fifteen of the Act (which relates to ancillary powers of the Federal Court) shall come into force on the making of this Order.

Expenses for Equipment and Voyage.

4. There shall be paid to a Judge who was permanently resident in Europe at the date of his appointment an allowance

of five hundred pounds for expenses in respect of equipment and travelling on appointment.

Salaries.

5. There shall be paid to a Judge in respect of time spent on actual service salary at one of the following rates which is appropriate to him, that is to say—

Chief Justice, or acting Chief Justice...Rs. 7,000 per month;

Any other Judge, or an acting Judge...Rs. 5,500 per month;

Provided that, if a Judge at the time of his appointment is in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Crown in India, his salary in respect of service in the Federal Court shall be reduced by the amount of that pension.

Leave and Vacation.

6. Leave may be granted to a Judge during term-time in the following circumstances :—

(a) on medical certificate, for a period not exceeding six months, or for two or more periods not exceeding in the aggregate six months during the whole period of his service as Judge;

(b) for a period not exceeding six months, and not more than once during the whole period of his service as a Judge, otherwise than on medical certificate.

7. There shall be payable to a Judge in lieu of salary—

(a) in respect of any period of leave, an allowance at the rate of one thousand one hundred and ten rupees a month if resident in Asia during his leave, and at the rate of one hundred and eleven pounds a month if resident outside Asia;

(b) in respect of joining time on his return from leave out of India, an allowance at the rate of one thousand one hundred and ten rupees a month.

8. Extraordinary leave not exceeding six months in duration may be granted during term-time not more than once during the period of a Judge's service as such in excess of any leave permissible under paragraph six of this Order, but no salary or allowances shall be payable in respect of the period of such leave.

9.—(1) If a Judge overstays his leave or any vacation he shall receive no salary in respect of the period of his absence in excess of the leave granted to him or beyond the end of the vacation, as the case may be :

Provided that, if such absence is due to circumstances beyond his control, the period thereof may be treated as leave entitling him to such allowances as are mentioned in paragraph seven of this Order, but no account shall be taken of that period for the purposes of paragraph six of this Order.

(2) Nothing in this Order shall be construed as requiring a Judge to rejoin on the expiration of a period of leave when that period expires immediately before the commencement of a vacation, nor as authorising any acting Chief Justice or acting Judge to continue to hold his acting appointment during a vacation.

10. The power to grant, refuse, revoke or curtail leave shall be vested in the Governor-General exercising his individual judgment, after consultation with the Chief Justice.

Passages.

11.—(1) A Judge who is member of the Indian Civil Service shall have such rights in respect of passages for himself and his wife and children, if any, as under the rules of that service he would have had if he had not been appointed a Judge, his services as a Judge in India being treated as service for the purpose of determining those rights.

(2) Any other Judge whose domicile at the date of his first appointment as a Judge in India was elsewhere than in Asia shall have such rights in respect of passages for himself and his wife and children, if any, as under the rules for the time being applicable to persons who became members of the Indian Civil Service on that date, he would have had if he had become a member thereof on that date and if his service as a Judge in India were treated as service therein for the purpose of determining those rights :

Provided that—

- (i) if he has received an allowance for equipment and voyage on appointment as a Judge in India, he shall not be entitled to a passage (whether for himself, or his wife or children) until the completion of five years, nor to a second passage until the completion of ten years, total service as a Judge in India; and
- (ii) if he dies while serving as a Judge, his wife and children shall not be entitled to any concession in respect of passages in addition to the gratuity for which provision is made in this Order.

Pensions.

12.—(1) Subject to the provisions of this Order, a pension shall be payable in accordance with the provisions thereof to a Judge of the Federal Court on his retirement if, but only if,—

- (a) he has completed not less than seven years' service for pension as a Judge in India; or
- (b) he has completed not less than three years' service for pension as a Judge of the Federal Court and has attained the age of sixty-five years; or
- (c) he has completed not less than three years' service for pension as a Judge of the Federal Court and his re-

tirement is medically certified to be necessitated by ill-health; or

- (d) he is a member of the Indian Civil Service who under the rules of that Service is entitled to retire with a pension.

(2) The Secretary of State may for special reasons direct that any period not exceeding three months shall be added to a Judge's service for pension, and any such period so added shall count for pension purposes—

- (a) in the case of a Judge who has served in the Federal Court as Chief Justice only, as service as Chief Justice; and

- (b) in the case of any other Judge of the Federal Court, as service as a puisne Judge.

13. Subject to the subsequent provisions of this Order, the pension payable thereunder to a Judge who on his retirement is entitled to a pension shall be calculated—

- (a) in the case of a Chief Justice, other than a Chief Justice who is so entitled only by virtue of being a member of the Indian Civil Service, and in the case of a puisne Judge who is not a member of the Indian Civil Service, in accordance with the rules in Part I of the First Schedule to this Order;

- (b) in the case of a Chief Justice who is so entitled only by virtue of being a member of the Indian Civil Service and in the case of a puisne Judge who is a member of the Indian Civil Service, in accordance with the rules in Part II of the said Schedule.

14. The pension payable to a Judge to whom paragraph twenty-seven (provision as to existing Judges) of the Government of India (High Court Judges) Order, 1937, applied before the

date of his appointment to the Federal Court shall in no case be less than the pension which would have been payable to him under the rules to which he was subject immediately before that date if his service, if any, as Chief Justice of the Federal Court had been service as Chief Justice of the Calcutta High Court and his service, if any, as a puisne Judge of the Federal Court had been service as Chief Justice of one or more of the Chartered High Courts, other than those at Calcutta or Nagpur.

15.—(1) The provisions of this paragraph shall apply in relation to a Judge who is a member of a Civil Service of the Crown in India.

(2) If any such Judge is entitled to a pension under the foregoing provisions of this Order he shall elect to receive either that pension or such pension as is referred to in the next succeeding sub-paragraph.

(3) If any such Judge is not entitled to a pension under the foregoing provisions of this Order or, being entitled to such a pension, elects not to receive that pension, the pension payable to him shall be—

(a) the pension for which he would have been eligible under the rules of his Civil Service if he had not been appointed a Judge in India, his service as a Judge in India being treated as service for the purpose of calculating that pension; and

(b) if he is not a member of the Indian Civil Service, a special additional pension of five hundred rupees per annum in respect of each completed year of service for pension as a Judge in India, but not in any case exceeding two thousand five hundred rupees per annum.

16. If at the time of his appointment to the Federal Court a Judge is in receipt of a pension in respect of previous service as

a Judge of a High Court the pension payable to him under this Order shall be an additional pension for service in the Federal Court equal to the difference between his original pension and the pension to which he would have been entitled under this Order if his service in the Federal Court had been rendered in continuation of the previous service for which his original pension was granted.

17. There shall be paid to the legal personal representatives of any Judge who dies while in possession of his office and who was at the time of his first appointment as a Judge in India permanently resident in Europe—

(a) if the death occurred more than six months after the date of his assumption of office as a Judge in India a sum equal to six months' salary in addition to any salary due to the Judge at the date of his death; or

(b) if the death occurred within six months after his assumption of office as a Judge in India or during his voyage to India for the purpose of first assuming office as such, sum as with any amount received by or due to the Judge on account of salary will make up the amount of one year's salary.

18. The rules for the time being in force with respect to the grant of extraordinary pension and gratuities and privileges in regard to special disability leave and passages to, or in respect of, members of the Indian Civil Service who may suffer injury or die as a result of violence shall apply in relation to a Judge, whether a member of a civil service or not, subject, however, to the modification that references in those rules to tables of injury gratuities and pensions, and of family gratuities and pensions, shall be construed as references to the tables in the Second Schedule to this Order.

19. Pensions expressed in sterling only shall, if paid in India, be converted at such rate of exchange as the Secretary of State may from time to time prescribe :

Provided that nothing in this paragraph shall affect any specific privilege in respect of the conversion of sterling pensions which was conferred by any Rules previously in force on persons who on the 1st February, 1921, were members of a civil service of the Crown in India.

20. The Civil Pensions (Commutation) Rules applicable to persons appointed by the Secretary of State shall with any necessary modifications apply to Judges of the Federal Court.

21. Save as may be otherwise expressly provided in the relevant rules relating to the grant of extraordinary pensions and gratuities, the authority competent to grant pension to a Judge under the provisions of this Order shall be the Governor-General, exercising his individual judgment.

Travelling Allowances.

22. A Judge shall receive such reasonable allowances to reimburse him for expenses incurred in travelling on duty in India and shall be afforded such reasonable facilities in connection with travelling as the Governor-General may from time to time prescribe exercising his individual judgment.

Subsidiary.

23. Subject to the provisions of this Order and of any other Order in Council made under the Act, the conditions of service of a Judge shall be determined by the rules for the time being applicable to an officer of non-Asiatic domicile or, as the case may be, of Asiatic domicile, appointed by the Secretary of State to a civil service of the Crown in India and holding the rank of Secretary to the Government of India :

Provided that nothing in this paragraph shall have effect so as to give to a Judge who is a member of a civil service of the Crown in India less favourable terms in respect of any of his conditions of service than those to which he would be entitled as a member of his civil service if he had not been appointed a Judge, his service as a Judge in India being treated as service for the purpose of determining those terms.

Repeal and Saving.

24. Subject as hereinafter provided, paragraphs two and four to ten of the Government of India (Federal Court) Order, 1936, shall cease to have effect :

Provided that in relation to the first Chief Justice of India this Order shall have effect as if for the provisions of paragraphs twelve to seventeen thereof there were substituted the provisions of paragraphs five and six of the said Order of 1936.

M. P. A. Hankey.

FIRST SCHEDULE.

(Paragraph 13.)

PENSIONS OF JUDGES.

PART I.

1. The Judges to whom the provisions of this Part of this Schedule apply are a Chief Justice, not being a Chief Justice who is entitled to a pension only by virtue of being a member of the Indian Civil Service, and a puisne Judge who is not a member of the Indian Civil Service.

2. The pension payable to a Chief Justice who has completed seven years service for pension as a Judge in India shall be an amount equal to the sum of the following amounts, that is to say—

- (i) an amount equal to the pension which would have been payable to him in accordance with the scale and rules in Part I of the Third Schedule to the Government of India (High Court Judges) Order, 1937, if his service as Chief Justice of the Federal Court had been rendered as Chief Justice of the Calcutta High Court, and his service, if any, as a puisne Judge of the Federal Court had been rendered as Chief Justice in any one or more of the Chartered High Courts other than those at Calcutta and Nagpur;
- (ii) an additional amount of £15 for each completed year of service as Chief Justice of the Federal Court until he has become entitled to a pension of £1,800, and thereafter an additional amount of £90 for each completed year of such service :

Provided that the aggregate amount of his pension shall in no case exceed £2,000 per annum.

3. The pension payable to a puisne Judge to whom this Part of this Schedule applies and who has completed seven years service for pension as a Judge in India shall be an amount equal to the pension which would have been payable to him in accordance with the scale and rules in part I of the Third Schedule to the Government of India (High Court Judges) Order, 1937, if his service as Judge of the Federal Court had been rendered as Chief Justice in any one or more of the Chartered High Courts other than those at Calcutta and Nagpur.

4. The pension payable to a Judge (whether a Chief Justice or a puisne Judge) to whom this Part of this Schedule applies, and who has completed three years service for pension in the Federal Court, but less than seven years service for pension as a Judge in India shall be—

- (i) for each completed year of service as Chief Justice of the Federal Court, £140,
- (ii) for each completed year of service as a puisne Judge of the Federal Court, £105 :

Provided that a Judge who has rendered service for pension both as Chief Justice of the Federal Court and also as a puisne Judge of that Court may claim that any period of service for pension less than a completed year rendered by him as Chief Justice shall be treated for the purposes of this sub-paragraph as service for pension rendered by him as a puisne Judge.

5. If a puisne Judge of the Federal Court who has served as acting Chief Justice thereof is subsequently appointed Chief Justice, his service as acting Chief Justice shall, for the purposes of paragraphs two and four of this Part of this Schedule, be treated as service as Chief Justice.

6. For the purpose of calculating, under paragraphs two and three of this Part of this Schedule, the pension, which would have been payable in accordance with the scale and rules in Part I of the Third Schedule to the Government of India (High Court Judges) Order, 1937, the period during which a Judge of a Chartered High Court who is appointed Chief Justice or a puisne Judge of the Federal Court performed in an acting capacity the duties of a Chief Justice of a Chartered High Court shall count as though he had been subsequently appointed to be Chief Justice of that High Court.

PART II.

1. The Judges to whom the provisions of this Part of this Schedule apply are a puisne Judge of the Federal Court who is a member of the Indian Civil Service, and a Chief Justice of the Court who is entitled to a pension only by virtue of being a member of the Indian Civil Service.

2. The pension payable to any such Judge shall be—

- (a) the pension to which he is entitled under the ordinary rules of the Indian Civil Service, his service as a Judge in India being treated as service therein, and
- (b) an additional pension of £105 for each completed year of service for pension in the Federal Court :

Provided that—

- (i) his aggregate pension shall not exceed £1,500 ;
- (ii) his aggregate pension shall not be less than the pension to which he would have been entitled under the Government of India (High Court Judges) Order, 1937, if his service in the Federal Court had been rendered as Chief Justice in one or more of the Chartered High Courts, other than those at Calcutta and Nagpur.

SECOND SCHEDULE.

(Paragraph 18.)

INJURY, GRATUITIES AND PENSIONS.

Officer.	Gratuity.		Annual Pension Higher Scale.		Annual Pension Lower Scale.	
	Rs.	£.	Rs.	£.	Rs.	£.
The Chief Justice of India or Acting Chief Justice or a Judge or Acting Judge of the Federal Court ...	27,000	2,025	5,400	405	4,700	352

LAW OF PROTECTION OF INDIAN STATES

FAMILY GRATUITIES AND PENSIONS.

A.—Widows.

Officer.	Gratuity.		Annual Pension.	
	Rs.	£	Rs.	£
The Chief Justice of India or Acting Chief Justice or a Judge or acting Judge of the Federal Court ...	17,000	1,275	5,000	375

B.—Children.

				Annual Child's Pension.	
				Rs.	£
If Child is motherless ...	...	...	...	550	41
If Child is not motherless	...	...	...	320	24

APPENDIX V.

The Federal Court Act, 1937.

Received the assent of the Governor-General on the 7th October 1937 and was published in the "*Gazette of India*," dated the 9th October 1937.

Act No XXV of 1937.

An Act to empower the Federal Court to make rules for regulating the service of processes issued by the Court.

WHEREAS it is expedient to confer upon the Federal Court a supplemental power which is necessary for the purpose of enabling the Court more effectively to exercise the jurisdiction conferred upon it by or under the Government of India Act, 1935; It is hereby enacted as follows :—

1. *Short title.*—This Act may be called the Federal Court Act, 1937.

2. *Power of Federal Court to make rules.*—The Federal Court may make rules for regulating the service of processes issued by the Court, including rules requiring a High Court from which an appeal has been preferred to the Federal Court to serve any process issued by the Federal Court in connection with that appeal.

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RULES OF THE FEDERAL COURT

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FEDERAL COURT

NOTIFICATION.

The 2nd December 1937.

No. F.-2/1/37-F. C.—The following notification relating to the promulgation of the Federal Court Rules is published for general information :—

RULES OF THE FEDERAL COURT

The Federal Court, in pursuance of the powers conferred on it by Section 214 of the Government of India Act, 1935, and of all other powers enabling it in that behalf, with the approval of the Governor-General, hereby makes the following Rules :—

PART I

General

ORDER I.

INTERPRETATION, ETC.

1. These Rules may be cited as the Federal Court Rules, and shall come into force as soon as they are notified in the *Gazette of India*.

2. In these Rules, unless the context otherwise requires—

“Act” means the Government of India Act, 1935;

“Advocate” means a person entitled to appear and plead before the Federal Court;

“Agent” means an Agent admitted and enrolled under these Rules;

“Chief Justice” means the Chief Justice of India;

“Code” means the Civil Procedure Code, 1908, as amended or modified by any Order in Council or by or under any Central Act;

“Court” means the Federal Court;

“decree” and “order” have the same meanings as in the Code;

“Judge” means a Judge of the Court;

“judgment” means the statement given by the Court or a Judge of the grounds of a decree or order;

“month” means a calendar month;

“party” and all words descriptive of parties to proceedings before the Court (as “appellant,” “respondent,” “plaintiff,” “defendant” and the like) include, in respect of all acts proper to be done by an Agent, the Agent of the party in question, when he is represented by an Agent;

“prescribed” means prescribed by rules of the Court;

“Province” includes a Chief Commissioner’s Province;

“record” in Part II of these Rules means the aggregate of papers relating to an appeal (including the pleadings, proceedings, evidence, and judgments) proper to be laid before the Court at the hearing of the appeal;

“Registrar” and “Registry” mean respectively the Registrar and Registry of the Court;

“respondent” includes an intervener;

“signed” has the same meaning as in the Code.

3. Where by these Rules or by any order of the Court any step is required to be taken in connection with any cause, matter or appeal before the Court, that step shall, unless the context otherwise requires, be taken in the Registry.

4. Where any particular number of days is prescribed by these Rules, the same shall be reckoned exclusively of the first day and inclusively of the last day, unless the last day shall happen to fall on a day on which the offices of the Court are closed, in which case the time shall be reckoned exclusively of that day also and of any succeeding day or days on which the offices of the Court continue to be closed.

5. None of the provisions of the Code shall apply to any proceedings in the Court unless expressly incorporated in these Rules.

ORDER II.

DOCUMENTS.

1. The officers of the Court shall not receive any pleading, petition, affidavit or other document, except original exhibits and certified copies of public documents, unless it is fairly and legibly transcribed on one side of Government water-marked paper, foolscap size, and all office copies shall be transcribed in like manner.

2. No document in a language other than English shall be accepted for the purpose of any proceedings before the Court, unless translated in accordance with these Rules.

3. Every document required to be translated shall be translated by a translator nominated or approved by the Court.

4. Every translator shall, before acting, make an oath or affirmation that he will translate correctly and accurately all documents given to him for translation.

ORDER III.

AFFIDAVITS.

1. Every affidavit shall be intituled in the cause, matter or appeal in which it is sworn.

2. Every affidavit shall be drawn up in the first person, and shall be divided into paragraphs to be numbered consecutively, and shall state the description, occupation, if any, and the true place of abode of the deponent.

3. The costs occasioned by any unnecessary prolixity in the title to an affidavit or otherwise shall be disallowed by the Taxing Officer.

4. An affidavit requiring interpretation to the deponent shall be interpreted by an interpreter nominated or approved by the Court, if made within the Province of Delhi, and if made elsewhere shall be interpreted by a competent person who shall himself make an affidavit that he is a competent person and that he has correctly interpreted the affidavit to the deponent.

5. Affidavits for the purposes of any cause, matter or appeal before the Court may be sworn before any Court or officer mentioned in Section 139 of the Code, or before a commissioner generally or specially authorised in that behalf by the Chief Justice.

6. Where the deponent is a purdahnashin lady she shall be identified by a person to whom she is known and that person shall prove the identification by a separate affidavit.

7. Every exhibit annexed to an affidavit shall be marked with the title and number of the cause, matter or appeal and shall be initialled and dated by the commissioner, court or officer before whom it is sworn.

8. No affidavit having any interlineation, alteration or erasure shall be filed in Court unless the interlineation or alteration is initialled, or unless in the case of an erasure the words or figures written on the erasure are rewritten in the margin and initialled, by the commissioner or officer before whom the affidavit is sworn.

9. The Registrar may refuse to receive an affidavit where in his opinion the interlineations, alterations or erasures are so numerous as to make it expedient that the affidavit should be rewritten.

10. Where a special time is limited for filing affidavits, no affidavit filed after that time shall be used except by leave of the Court.

11. In this Order "affidavit" includes a petition or other document required to be sworn and "sworn" shall include "affirmed."

ORDER IV.

INSPECTIONS, SEARCHES, ETC.

1. Subject to the provisions of these Rules, a party to any cause, matter or appeal who has entered an appearance shall be allowed to search, inspect or get copies of all pleadings and other documents or records in the case, on payment of the prescribed fees and charges.

2. The Court, at the request of a person not a party to the cause, matter or appeal, may on good cause shown allow such search or inspection or grant such copies as is or are mentioned in the last preceding Rule, on payment of the prescribed fees and charges.

3. A search or inspection under the last two preceding Rules during the pendency of a cause, matter or appeal, shall be allowed only in the presence, or with the consent, of the parties thereto who have entered an appearance, or after twenty-four hours' notice in writing to them, and copies of documents shall not be allowed to be taken, but notes of the search or inspection may be made.

4. Copies required under any of the preceding Rules of this Order may be certified as correct copies by any officer of the Court authorised in that behalf by the Registrar.

5. No record or document filed in any cause, matter or appeal shall, without the leave of the Court, be taken out of the custody of the Court.

ORDER V.

OFFICES OF THE COURT : SITTINGS AND VACATION, ETC.

1. The offices of the Court, except in vacation and on Saturdays and holidays, shall, subject to any order by the Chief Justice, be open daily from 10-30 a.m. to 4-30 p.m. but no work, unless of an urgent nature, shall be admitted after 4 p.m.

2. The offices of the Court shall be open on Saturdays from 10-30 a.m. to 1-30 p.m. but no work, unless of an urgent nature, shall be admitted after 12 noon.

3. The offices of the Court shall be open in vacation from 10-30 a.m. to 1-30 p.m. except on Saturdays and holidays, but no work unless of an urgent nature shall be received after 12 noon.

4. The Registrar shall not be absent from the Court without the leave of the Chief Justice, nor any other officer of the Court without the leave of the Registrar, but this Rule shall not apply to Sundays and holidays.

5. The Court shall hold one term annually commencing on the first Tuesday in October in each year, or, if that day is a Court holiday, then on the next working day, and continuing to the commencement of the long vacation in the year next following, and shall sit in Delhi and at such other place or places, if any, as may from time to time be notified in the Gazette of India.

6. The long vacation of the Court shall commence on such date as may be fixed in each year by the Chief Justice and notified in the Gazette of India.

7. The Court shall not ordinarily sit on Saturdays, nor on the following days, that is to say, December 24th to January 6th, both days inclusive, Good Friday to Easter Monday, both days inclusive, and on any other days notified as Court holidays in the Gazette of India.

8. *A Judge shall be appointed by the Chief Justice before the commencement of each long vacation for the hearing of all matters which may require to be immediately or promptly dealt with.

ORDER VI.

OFFICERS OF THE COURT, ETC.

1. The Registrar shall have the custody of the records of the Court and shall exercise such other functions as are assigned to him by these Rules.

2. Any person appointed by the Chief Justice to be acting Registrar during the absence of the Registrar may exercise all the functions assigned to the Registrar by these Rules, and accordingly any references in these Rules to the Registrar shall include references to an acting Registrar.

3. The Chief Justice may assign, and the Registrar may with the approval of the Chief Justice delegate, to a Deputy Registrar or Assistant Registrar any functions required by these Rules to be exercised by the Registrar.

4. The Registrar shall, subject to any general or special directions given by the Chief Justice, allocate the duties of the Registry among the officers of the Court, and shall, subject to

these Rules and to any such directions as aforesaid, supervise and control the officers and servants of the Court.

5. The official Seal to be used in the Court shall be such as the Chief Justice may from time to time direct, and shall be kept in the custody of the Registrar.

6. Subject to any general or special directions given by the Chief Justice, the Seal of the Court shall not be affixed to any writ, rule, order, summons or other process save under the authority in writing of the Registrar.

7. The Seal of the Court shall not be affixed to any certified copy issued by the Court save under the authority in writing of the Registrar or of a Deputy Registrar or Assistant Registrar if authorised in that behalf in writing by the Registrar.

8. The Registrar shall keep a list of all cases pending before the Court and shall, subject to these Rules and to any general or special directions given by the Chief Justice, prepare the list of cases ready for hearing and shall cause public notice to be given thereof and of the day, if any, assigned for the hearing of any case or cases in the list.

ORDER VII.

ADVOCATES AND AGENTS.

1. A person qualified as hereinafter mentioned may apply to be enrolled as an Advocate in the Court and if his application is granted shall, on payment of the prescribed fee, be entitled to be so enrolled and to appear and plead before the Court.

2. The Roll of Advocates shall be in two parts, one containing the names of Senior Advocates and the other the names of other Advocates.

3. A Senior Advocate shall have precedence over other

advocates who are not Senior Advocates, and the provisions of the First Schedule to these rules shall apply with respect to Senior and other Advocates.

4. A person shall not be entitled to be enrolled as an Advocate unless he is, and has been for not less than ten years in the case of a Senior Advocate or five years in case of any other Advocate, enrolled as an advocate in the High Court of a Province.

*The period during which a person was entitled as of right to practise as a vakil or pleader in the High Court of a Province immediately before his enrolment as an Advocate in that High Court may be taken into account for the purpose of calculating the above mentioned periods of ten years or five years, as the case may be.

5. A person who in the case of an appeal before the Court has appeared as counsel, advocate or vakil in that case in the Court from which the appeal is brought shall be entitled to appear and plead in the appeal, notwithstanding that he has not been enrolled as an Advocate in the Court.

6. The Chief Justice may, if for any special reason he thinks it desirable so to do, permit any other person who is in his opinion sufficiently qualified to appear as an Advocate in a particular case.

7. No person shall appear as Advocate in any case, unless he is instructed by an Agent.

8. The Roll of Advocates shall be kept by the Registrar and shall contain such particulars as the Court may from time to time require.

9. All Advocates appearing before the Court shall wear such robes and costume as may from time to time be directed by the Chief Justice.

*Inserted by Federal Court (Amendment) Rules, 1938: *vide* Federal Court Notification No. F.—23 I. 38—F. C.; dated 7th April, 1938, published in *Punjab Gazette* 1938, Part II, page 305.

10. The enrolment fee for Senior Advocates shall be Rs. 500. and for other Advocates Rs. 250.

11. The Advocate-General of India shall have precedence over all other Advocates in the Court.

12. The Advocates-General of Bengal, Madras, Bombay, the United Provinces, the Punjab, Bihar, the Central Provinces and Berar, Assam, North-West Frontier Province, Orissa and Sind shall in that order have precedence immediately after the Advocate-General of India.

13. An Advocate-General shall by virtue of his office have the status and precedence of a Senior Advocate in the Federal Court, notwithstanding that his name is not in the list of Senior Advocates.

14. Subject to the preceding rules of this Order, an Advocate appearing before the Court shall have precedence among the Senior or other Advocates, as the case may be, according to the date of his enrolment as a Senior or other Advocate, as the case may be, in the Court :

Provided that an Advocate enrolled before December 31st, 1938, shall have precedence among the Senior or other Advocates, as the case may be, according to the date of his enrolment in his own High Court.

Any question which arises with respect to the precedence of any Advocate shall be determined by the Federal Court.

15. A person may apply to be admitted and enrolled as an Agent in the Court if he is entitled to be admitted to practise as an attorney or solicitor in any High Court or if, subject to the next succeeding Rule, he is entitled to appear and plead in a High Court, and if the application is granted shall on payment of the prescribed fee be entitled to be so enrolled.

16. An Agent shall before enrolment subscribe before the Registrar a declaration, in such form as the Chief Justice may

from time to time direct, undertaking to observe the rules, regulations, orders and practice of the Court, to pay all fees or charges due and payable in any cause, matter or appeal in the Court, and not, so long as his name remains on the Roll of Agents, to appear or plead before any High Court.

17. The enrolment fee for an Agent shall be Rs. 100.

18. Every Agent shall have an office in the Province of Delhi and shall notify the Registrar of the address of his office and of any change of address, and any notice, writ, summons or other document served on the Agent at the address notified by him shall be deemed to have been properly served.

19. An Agent who wishes to have his name removed from the Roll of Agents shall apply by petition, verified by affidavit, entitled "In the matter of _____, an Agent in this Court," and stating the date of his enrolment as an Agent, the reason why he wishes his name to be removed, that no application or other proceeding in any Court is pending against him or is anticipated by him, and that no fees are owing to the Court for which he is personally responsible.

20. Every Agent shall before acting on behalf of any person or party file in the Registry the power or warrant of attorney authorising him to act.

21. No person having an Agent on the record shall file a power or warrant of attorney authorising another Agent to act for him in the same case save with the consent of the former Agent or by leave of a Judge, unless the former Agent is dead, or is unable by reason of infirmity of mind or body to continue to act.

22. No Agent may, without the leave of the Court, withdraw from the conduct of any case by reason only of the non-payment of costs by his client.

23. No person having an Agent on the record shall be heard in person save by special leave of the Court.

24. No Agent shall authorise any person whatsoever, except another Agent, to practise or do any act whatsoever in his name in any case.

25. Where a party changes his Agent, the new Agent shall give notice of the change to all other parties appearing.

26. No Advocate shall act as Agent nor Agent as Advocate in any circumstances whatsoever.

27. Where on the complaint of any person or otherwise, the Court is of opinion that an Advocate has been guilty of misconduct or of conduct unbecoming an Advocate, the Court may suspend him from practising before the Court either permanently or for such period as the Court may think fit, and shall report his name to his own High Court.

28. Where on the complaint of any person or otherwise, the Court is of opinion that an Agent has been guilty of misconduct or has committed a breach of the undertaking subscribed by him, the Court may suspend him from practising before the Court for such period as the Court may determine, or may direct his name to be struck off the roll of Agents and shall report his name to the High Court or other authority, if any, to which he is subject.

29. For the purpose of the last two preceding Rules the Court shall in the first instance direct a summons to issue returnable before the Court or before a Special Bench to be constituted by the Chief Justice, requiring the Advocate or Agent, as the case may be, to show cause against the matters alleged in the summons, and the summons shall, if possible, be served personally upon him with copies of any affidavit or statement before the Court at the time of the issue of the summons.

ORDER VIII.

BUSINESS IN CHAMBERS.

1. The powers of the Court in relation to the following matters may be exercised by the Registrar :—

- (1) Applications for revivor or substitution
- (2) Applications for leave to appeal or defend as pauper
- (3) Applications for discovery and inspection
- (4) Applications for delivery of Interrogatories
- (5) Certifying of cases as fit for employment of advocate
- (6) Applications for substituted service
- (7) Applications for time to plead, for production of documents and generally relating to conduct of cause, appeal or matter.

2. The powers of the Court in relation to the following matters may be exercised by a single Judge sitting in Chambers but subject to reconsideration, at the instance of any aggrieved party, by a bench of three Judges, which may include the Judge who dealt with the matter :—

- (1) Approval of Special Translator
- (2) Approval of Special Interpreter
- (3) Applications for production of documents outside Court premises
- (4) Applications for change of Agent
- (5) Applications by Agents for leave to withdraw
- (6) Applications for leave to compromise or discontinue pauper appeals

- (7) Applications for striking out or adding party
- (8) Applications for separate trials of causes of action
- (9) Applications for separate trials to avoid embarrassment
- (10) Rejection of plaint
- (11) Application for setting down for judgment in default of written statement
- (12) Applications for better statement of claim or defence
- (13) Applications for particulars
- (14) Applications for striking out any matter in a pleading
- (15) Applications for amendment of pleading
- (16) Applications for enlargement of time to amend
- (17) Applications to withdraw suits
- (18) Applications for payment into Court
- (19) Applications for payment out of Court of money or security
- (20) Applications for payment out of Court of interest or dividend on securities
- (21) Applications to tax bills returned by Registrar
- (22) Applications for costs of taxation where one sixth is taxed off
- (23) Applications for review of taxation by Court
- (24) Applications for enlargement or abridgment of time
- (25) Applications for issue of commission to examine witnesses

- (26) Applications for security for costs
- (27) Applications for assignment of Security Bonds
- (28) Applications for enforcing payment of costs under directions of Registrar
- (29) Applications for extending returnable dates of warrants
- (30) Applications for order against clients for payment of costs
- (31) Applications by outsiders for return of exhibits
- (32) Applications for transmission of original documents to Privy Council
- (33) Applications for taxation and delivery of bills of costs
- (34) Applications under Section 131 (4) of the Act.

3. An appeal shall lie from the Registrar in all cases to the Judge in Chambers.

4. The Registrar may, and if so directed by the Judge in Chambers shall, at any time adjourn any matter to the Judge in Chambers, and the Judge in Chambers may at any time adjourn any matter into Court, and the Court may direct that any matter shall be transferred from the Registrar or the Judge in Chambers to the Court.

PART II

Appellate Jurisdiction

ORDER IX.

CIVIL APPEALS.

1. Where a certificate has been given under section 205 (1) of the Act, the provisions of Order XLV of the Code, as modified and adapted by the Government of India (Adaptation of Indian Laws) Order, 1937, shall apply in relation to appeals to the Federal Court.

2. Subject to the provisions of sections 4 and 12 of the Indian Limitation Act, 1908, applications under Rule 2 of the said Order XLV shall be presented within ninety days from the date of the signing of the decree or order appealed from.

ORDER X.

PROCEEDINGS AFTER ADMISSION OF APPEAL.

1. After the grant of a certificate by a High Court that a case involves a substantial question of law as to the interpretation of the Act or any Order in Council made thereunder, an appellant shall, subject to the provisions of the Code and of any rules made by the High Court relating to appeals to the Federal Court, without delay take all necessary steps to have the record prepared in the High Court and transmitted to the Registrar of the Federal Court.

2. The record so prepared shall be printed in such manner as may from time to time be directed by the Federal Court.

3. Within sixty days of the admission of the appeal by the High Court appealed from, the appellant shall lodge in the Federal Court his petition of appeal, which shall contain a concise statement of the facts of the case, of the grounds of appeal, and of the arguments and authorities upon which he proposes to rely at the hearing; and the Registrar shall thereupon send a copy of the petition to that High Court for service upon the respondent or, if the respondent has already entered an appearance, serve a copy upon the respondent.

4. An appellant may withdraw his appeal—

(a) at any time before the respondent has entered an appearance, by written notice to the Registrar of the Federal Court; and

(b) at any time after the respondent has entered an appearance, by petition to the Federal Court and upon such terms as to costs as the Court may think fit to impose.

5. Any respondent may file in the Registry, not less than fourteen days before the date appointed for the hearing, a concise statement of the facts of the case and of the arguments and authorities upon which he proposes to rely at the hearing; but if he does not do so, he shall not be entitled to be heard by the Court except on the question of costs.

6. The Registrar shall send to the appellant a copy of any statement filed by the respondent.

7. Each party shall lodge or file in the Registry as many copies of his petition of appeal or his statement as the Registrar may direct.

8. A party to an appeal who appears in person shall furnish the Registrar with an address for service, and all documents left at that address, or where service may be effected by post addressed to that address, shall be deemed to have been duly served.

ORDER XI.

APPEARANCE.

1. A respondent may enter an appearance at any time between the admission and the hearing of the appeal, but if he delays unduly in entering an appearance he shall bear, or be disallowed, the costs occasioned by his delay, unless the Court otherwise orders.

2. A respondent may, after entering appearance, apply for the summary determination of an appeal on the ground that

it is frivolous or vexatious or brought for the purpose of delay and the Court shall make such order thereon as it may think fit.

3. Two or more respondents may at their own risk as to costs enter separate appearances in the same appeal.

4. A respondent who has not entered an appearance shall not be entitled to receive any notices relating to the appeal from the Registrar.

5. Where a respondent fails to enter an appearance, the appeal may be set down *ex parte* as against him at any time after the expiration of sixty days from the lodging of the petition of appeal.

6. If a non-appearing respondent has been made a respondent by an order of the Federal Court after the admission of the appeal, the appeal may be set down *ex parte* as against him at any time after the expiration of ninety days from the date on which he was served with a copy of the order of the Court making him a respondent.

ORDER XII.

HEARING OF APPEALS.

1. As soon as may be after a petition of appeal has been lodged, the Registrar shall, after communicating with the parties, fix a day for the hearing of the appeal, due regard being had to the current business of the Court, to the time necessary for the service of the petition of appeal on the respondent, and any other relevant circumstances.

2. Subject to the last preceding Rule, all appeals filed in the Registry shall be heard in the order in which they are set down.

3. The Registrar shall, subject to the provisions of rule 4 of Order XI of these Rules, notify the parties to the appeal of the day fixed for the hearing.

4. Subject to the directions of the Court, at the hearing of an appeal not more than two Advocates shall be heard on a side.

5. The appellant shall not, without the leave of the Court, rely at the hearing on any grounds not specified in his petition of appeal.

6. Where the Court, after hearing an appeal, decides to reserve its judgment therein, the Registrar shall in due course place the appeal in the daily list of the day appointed by the Court for the delivery of the judgment.

7. A respondent may within the time limited for appearance deliver to the Registrar and to the appellant a notice in writing consenting to the appeal, and the Court may thereupon, if it thinks fit, make an order upon the appeal without requiring the attendance of the person so consenting.

ORDER XIII.

FAILURE TO PROSECUTE APPEAL, ETC.

1. If an appellant fails to take any step in an appeal within the time specified by these Rules, or, if no time is specified, it appears to the Registrar that the appellant is not prosecuting his appeal with due diligence, the Registrar shall call upon him to explain his default, and, if no explanation or no explanation which appears to the Registrar to be sufficient is offered, may issue a summons calling upon him to show cause to the Court why the appeal should not be dismissed for want of prosecution.

2. The Registrar shall send a copy of the summons mentioned in the last preceding Rule to every respondent who has entered an appearance and every such respondent shall be entitled to be heard before the Court and to ask for his costs and other relief.

3. A petition for an order of revivor or substitution shall be filed in the Federal Court and shall be accompanied by a

certificate or duly authenticated statement from the Court appealed from showing who in the opinion of that Court is the proper person to be substituted or entered on the record in place of, or in addition to, a party who has died, or undergone a change of status.

ORDER XIV.

PETITIONS FOR SPECIAL LEAVE TO APPEAL.

1. Where any person wishes to appeal to the Federal Court on a ground which in the circumstances of the case requires the leave of the Court under Section 205 (2) of the Act, he shall include a prayer for special leave to appeal in his petition of appeal.

2. A prayer for special leave to appeal shall be heard at the same time as the appeal.

ORDER XV.

PAUPER APPEALS.

1. Order XLIV in the First Schedule to the Code, and so much of Order XXXIII therein as is applicable, shall apply in the case of any person seeking to appeal to the Federal Court as a pauper, with the substitution of a notice of appeal, or a petition for special leave to appeal, for a memorandum of appeal, of the Advocate General of India for the Government Pleader and of the Governor-General in Council for the Provincial Government.

2. The Court may allow an appeal to be continued in forma pauperis after it has been begun in the ordinary form.

3. An application for permission to proceed as a pauper shall be made on petition, setting out, concisely in separate paragraphs, the facts and relief prayed.

4. The Registrar shall, on satisfying himself that the provisions of Order XXXIII of the Code have been complied with,

direct that the petition shall be filed and set down for investigation on a day to be fixed for the purpose.

5. Every decree in a pauper appeal shall contain an order for payment of Court fees mentioned in Rules 10 and 11 of Order XXXIII of the Code.

6. In every pauper appeal the Registrar shall, after the disposal thereof, send to the Governor-General in Council a memorandum of the Court fees due and payable by the pauper.

7. No person shall take, agree to take, or seek to obtain from a person proceeding as a pauper any fee, profit or reward for the conduct of the pauper's business in the Court, but the Court may nevertheless award costs against an adverse party and in that case may direct payment thereof to the Agent representing the pauper.

8. The preceding Rules of this Order shall apply, with the necessary modifications and adaptations in the case of any person seeking to defend an appeal to the Court as a pauper.

9. No appeal begun or carried on by a pauper appellant or respondent shall be compromised or discontinued without the leave of the Court.

ORDER XVI.

CRIMINAL APPEALS.

1. Where any High Court in British India makes any final order in the exercise of its criminal jurisdiction, whether original, appellate or revisional, and gives such a certificate as is mentioned in Section 205 of the Act, any party in the case may appeal to the Federal Court within thirty days from the date of the order.

2. The provisions of Sections 4 and 12 of the Indian Limitation Act, 1908, shall apply in relation to the said period of thirty days as they apply in relation to the periods of limitation prescribed by that Act.

3. The appeal shall be in the form of a petition in writing,

which shall be accompanied by a copy of the judgment and order appealed against.

4. The appellant, if he is in jail, may present his petition of appeal and the accompanying documents to the officer in charge of the jail, who shall forward them to the Federal Court.

5. On receipt of the petition, the Registrar shall cause notice to be given to the appellant and to the Advocate-General of India or of the Province concerned, as the case may require, of the date on which the appeal will be heard, and shall, on the application of the said Advocate-General, furnish him with a copy of the grounds of appeal; and in cases where the appeal is by the Crown, the Registrar shall cause a like notice to be given to the accused.

6. The Registrar shall then send for the record of the case, if the record is not already in Court, and as soon as possible after the disposal of the appeal, he shall send a copy of the Court's judgment or order to the High Court concerned.

7. Pending the disposal of any appeal under these Rules, the Court may order that the execution of the sentence or order appealed against be stayed on such terms as the Court may think fit.

8. The preceding Orders in this Part of these Rules shall, with the necessary modifications and adaptations, apply to criminal appeals.

PART III.

Original Jurisdiction.

ORDER XVII.

PARTIES TO SUITS.

1. Two or more plaintiffs may join in one suit in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist.

2. Two or more defendants may be joined in one suit against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist.

3. Subject to the provisions of section 22 of the Indian Limitation Act, 1908, the Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any plaintiff or defendant improperly joined be struck out, and that the name of any plaintiff or defendant who ought to have been joined, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

4. Where it appears to the Court that any causes of action joined in one suit cannot conveniently be tried or disposed of together the Court may order separate trials or make such other order as may be expedient.

5. Where it appears to the Court that any joinder of plaintiffs or defendants may embarrass or delay the trial of the suit, the Court may order separate trials or make such order as may be expedient.

ORDER XVIII.

PLAINTS.

1. Every suit shall be instituted by the presentation of a plaint.

2. A plaint shall be presented to the Registrar, and all plaints shall be registered and numbered by him according to the order in which they are presented.

3. Every plaint shall comply with the rules contained in Order XXI of these Rules so far as they are applicable.

4. A plaint shall contain the following particulars :—

- (a) the names of the plaintiff and of the defendant ;
- (b) the facts constituting the cause of action and when it arose ;
- (c) the facts showing that the Court has jurisdiction ;
- (d) the declaration which the plaintiff claims.

5. The plaintiff shall endorse on the plaint, or annex thereto, a list of the documents (if any) which he has produced along with it and the Registrar shall sign the list if on examination he finds it to be correct.

6. The plaint shall be rejected :—

- (a) where it does not disclose a cause of action ;
- (b) where the suit appears from the statement in the plaint to be barred by any law.

7. Where a plaint is rejected the Court shall record an order to that effect with the reasons for the order.

8. The rejection of the plaint shall not of itself preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.

9. Where a plaintiff sues upon a document in his possession or power, he shall produce it to the Registrar when the plaint is presented and shall at the same time deliver the document or a copy thereof to be filed with the plaint.

10. Where the plaintiff relies on any other documents (whether in his possession or power or not) as evidence in support of his claim, he shall enter such documents in a list to be added or annexed to the plaint.

11. Where any such document is not in the possession or power of the plaintiff, he shall, if possible, state in whose possession or power it is.

12. A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint, and which is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence at the hearing of the suit.

ORDER XIX.

ISSUE AND SERVICE OF SUMMONS.

1. When a suit has been duly instituted a summons may be issued to the defendant to appear and answer the claim.

2. Every summons shall be signed by the Registrar, and shall be sealed with the Seal of the Court.

3. Every summons shall be accompanied by a copy of the plaint.

4. The summons shall be served by being sent by registered post to the Advocate-General of India or the Advocate-General for the Province, as the case may be, or to an Agent of the defendant empowered to accept service.

5. There shall be endorsed on every summons a notice requiring the defendant to enter an appearance within twenty-eight days after the summons has been served.

6. A defendant shall enter his appearance by filing in the Registry a memorandum in writing containing the name and place of business of his Agent, and in default of appearance being entered within the time mentioned in the summons, or as hereinafter provided, the suit may be heard *ex parte*.

7. The defendant shall forthwith give notice of his having entered an appearance to the plaintiff.

8. The plaintiff shall within fourteen days after the defendant has entered an appearance take out a summons for directions returnable before the Judge in Chambers, and the Judge shall on the hearing of the summons give such directions with respect

to pleadings (including a written statement by the defendant), interrogatories, the admission of documents and facts, the discovery, inspection and production of documents and such other interlocutory matters as he may think expedient.

ORDER XX.

WRITTEN STATEMENT, SET-OFF AND COUNTER-CLAIM.

1. It shall not be sufficient for a defendant in his written statement to deny generally the facts alleged by the plaintiff but he shall deal specifically with each allegation of fact of which he does not admit the truth, except damages.

2. Where a defendant denies an allegation of fact he shall not do so evasively but shall answer the point of substance.

3. Each allegation of fact in the plaint, if not denied specifically or by necessary implication, or not expressly stated to be not admitted in the pleading of the defendant, shall be taken to be admitted, but the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.

4. Where the defendant claims to set off against a demand by the plaintiff any ascertained sum of money, he may in his written statement, but not afterwards without the leave of the Court, state the grounds of his claim and the particulars of the debt sought to be set off.

5. The written statement containing the particulars mentioned in the last preceding Rule shall have the same effect as a plaint in a cross-suit so as to enable the Court to pronounce a final judgment in respect both of the original claim and of the set-off.

6. The rules relating to a written statement by a defendant shall apply to a written statement by a plaintiff in answer to a claim of set-off.

7. No pleading subsequent to the written statement of a defendant other than by way of defence to a set-off shall be presented except by the leave of the Court and upon such terms as the Court may think fit, but the Court may at any time require a written statement or additional written statement from any of the parties and may fix a time for presenting the same.

8. Where any party from whom a written statement is so required fails to present the same within the time fixed by the Court, the Court may pronounce judgment against him, or make such orders in relation to the suit as it thinks fit.

9. The defendant, in addition to his right of pleading a set-off, may set up by way of counter-claim against the claims of the plaintiff any right or claim in respect of a cause of action accruing to him either before or after the filing of the suit but before he has delivered his defence and before the time limited for delivering his defence has expired, whether that counter-claim sounds in damages or not, and the counter-claim shall have the same effect as a cross-suit, so as to enable the Court to pronounce a final judgment in the same suit, both on the original and on the counter-claim.

10. The Court may, if in its opinion the counter-claim cannot be disposed of in the pending suit or ought not to be allowed, refuse permission to the defendant to avail himself thereof, and require him to file a separate suit.

ORDER XXI.

PLEADINGS GENERALLY.

1. In this Order "pleading" means plaint or written statement.

2. Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies, but not the evidence by which those facts are to

be proved, nor any argumentative matter, and shall be divided into paragraphs numbered consecutively.

3. Dates, sums and numbers shall be expressed in figures, and if Indian dates are mentioned the corresponding English dates shall also be given.

4. A further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any pleading may in all cases be ordered, upon such terms, as to costs and otherwise, as may be just.

5. Wherever the contents of any document are material, it shall be sufficient to state the effect thereof as briefly as possible, without setting out the whole or any part thereof, unless the precise words of the document or any part thereof are material.

6. Every pleading shall be signed by, or by an Advocate on behalf of, the Advocate-General of India or by, or by an Advocate on behalf of, the Advocate General for the Province, as the case may be.

7. The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading which may be unnecessary or scandalous or which may tend to prejudice or embarrass or delay the trial of the suit, or which contravenes any of the provisions of this Order.

8. The Court may at any stage of the proceedings allow either party to amend his pleadings in such manner and on such terms as may be just, but only such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties.

9. If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited then within fourteen days from the date of the order, he shall not be permitted

to amend after the expiration of such limited time or of such fourteen days, as the case may be, unless the time is extended by the Court.

10. Amendments of pleadings made only for the purpose of rectifying a clerical error may be made on an order of the Registrar without notice, but unless otherwise ordered a copy of the order shall be served on all other parties.

ORDER XXII.

DISCOVERY AND INSPECTION.

1. Order XI of the First Schedule to the Code shall apply with respect to discovery and inspection in suits instituted before the Court, except Rules 5 and 23 of that Order.

2. Where the Court has made an order allowing one party to deliver interrogatories to the other, those interrogatories shall be answered by such persons as the Court may direct.

3. No application for leave to deliver interrogatories shall be made by the defendant until after he has filed his written statement.

4. After an order has been made for the delivery of interrogatories one set of the interrogatories, as allowed, shall be annexed and served with the order upon the person to be interrogated.

5. The Court may, for sufficient reason, allow any affidavit to be sworn, on behalf of the party from whom discovery, production or inspection is sought, by any person competent to make the same.

6. Where any document is ordered to be deposited in Court a copy of the order and a schedule of the document shall be left in the Registry at the time when the deposit is made.

7. When the purpose for which any documents have been deposited in Court is satisfied, the party by whom they were deposited may, pending the suit, have them delivered out to him,

if he has the consent in writing of the other party, or an order of the Court.

ORDER XXIII.

ADMISSIONS.

Order XII in the First Schedule to the Code with respect to admissions shall apply.

ORDER XXIV.

SUMMONING AND ATTENDANCE OF WITNESSES.

1. The provisions of sections 28 and 32 of the Code shall apply to summonses to give evidence or to produce documents under these Rules.

2. Order XVI in the First Schedule to the Code with respect to the summoning and attendance of witnesses shall apply, with the exception of the proviso to sub-rule (3) of Rule 10, and the words "(a) within the local limits of the Court's ordinary original jurisdiction, or (b) without such limits but" in Rule 19.

ORDER XXV.

ADJOURNMENTS.

Order XVII in the First Schedule to the Code with respect to adjournments shall apply, with the substitution in Rule 2 of the words "in such manner as it thinks just" for the words "in one of the modes directed in that behalf by Order IX, or make such other order as it thinks fit."

ORDER XXVI.

HEARING OF THE SUIT AND EXAMINATION OF WITNESSES.

1. Rules 1, 2, 3, 17 and 18 of Order XVIII in the First Schedule to the Code with respect to the hearing of suits and examination of witnesses shall apply.

2. Witnesses in attendance shall be examined orally in open Court and their evidence taken down in shorthand in the form of question and answer by such officers of the Court as may be appointed for the purpose.

3. The transcript of the shorthand note shall be signed by the officer recording the note and shall be deemed the deposition of the witness and shall form part of the record.

4. The party to any suit or matter in which the evidence has been taken in shorthand, and the witness whose evidence has been taken, shall be entitled upon payment of the prescribed fee to be furnished with a certified copy of the transcript.

ORDER XXVII.

AFFIDAVITS.

Order XIX in the First Schedule to the Code with respect to affidavits shall apply.

ORDER XXVIII.

JUDGMENTS, DECREES AND ORDERS.

1. The Court, after the case has been heard, shall pronounce judgment in open Court, either at once or on some future day, of which due notice shall be given to the parties or their Agents, and the decree or order shall be drawn up in accordance therewith.

2. The Court may read a judgment signed by a member of the Court, but not read by him, before his death, retirement, resignation or departure on leave.

3. A judgment pronounced by the Court or by a majority of the Court or by a dissenting Judge in open Court shall not afterwards be altered or added to, save for the purpose of correcting a clerical or arithmetical mistake or an error arising from any accidental slip or omission.

4. Certified copies of the judgment, decree or order shall be furnished to the parties on application to the Court, and at their expense.

5. Every decree shall be drawn up in the Registry and be signed by the Registrar and by the presiding judge, or in his absence by the next senior judge and shall be sealed with the Seal of the Court and shall bear the same date as the judgment in the suit.

6. A decree shall specify clearly the declaration granted or other determination of the suit.

7. In every decree or order that is not final, liberty to apply shall be implied.

8. Every order of the Court shall be drawn up in the Registry and be signed by the Registrar.

9. Every order made by the Registrar or other officer shall be drawn up in the Registry and signed by the Registrar or other officer as the case may be.

10. Every order after being signed shall be sealed and filed.

11. No decree or order shall be drawn up until applied for by a party

12. In cases of doubt or difficulty with regard to a decree or order made by the Court, the Registrar shall, before issuing the draft, submit the same to the Court.

13. Where a draft of any decree or order is required to be settled in the presence of the parties, the Registrar shall by notice in writing appoint a time for settling the same and the parties shall attend the appointment and produce their briefs and such other documents as may be necessary to enable the draft to be settled.

14. Where any party is dissatisfied with any decree or order as settled by the Registrar, the Registrar shall not proceed to complete the decree or order without allowing that party sufficient time to apply by motion to the Court.

ORDER XXIX.

WITHDRAWAL AND ADJUSTMENT OF SUITS.

1. Rules 1, 2 and 3 of Order XXIII in the First Schedule to the Code with respect to the withdrawal and adjustment of suits shall apply.

2. No new suit shall be brought in respect of the same subject-matter until the terms or conditions, if any, imposed by the order permitting the withdrawal of a previous suit or giving leave to bring a new suit have been complied with.

ORDER XXX.

PAYMENT INTO COURT.

Order XXIV in the First Schedule to the Code with respect to payment into Court shall apply.

ORDER XXXI.

SPECIAL CASE.

Rules 1, 3 and 5 of Order XXXVI in the First Schedule to the Code with respect to procedure by way of Special Case shall apply, except the words "which would have jurisdiction to entertain a suit, the amount or value of the subject-matter of which is the same as the amount or value of the subject-matter of the agreement" in sub-rule (1) of Rule 3, the words "claiming to be interested as plaintiff or plaintiffs" to the end of sub-rule (2) of Rule 3; and the words "and upon the judgment so pronounced a decree shall follow" in sub-rule (2) of Rule 5,

PART IV.

APPEALS TO HIS MAJESTY IN COUNCIL.

ORDER XXXII.

Order XLV in the First Schedule to the Code shall apply with respect to appeals by leave of the Federal Court to His Majesty in Council, with the following exceptions and modifications :—

1. Rules 4 and 5 shall not apply.
2. In rule 1 the words “any decision of the Federal Court” shall be substituted for the words “a final order.”
3. In rule 2 the words “Federal Court” shall be substituted for the words “Court whose decree is complained of.”
4. The following shall be substituted for sub-rule (1) of rule 3 :—

“(1) Every petition shall state the grounds of appeal and pray for a certificate that the case is a fit one for appeal to His Majesty in Council and that it does not fall within paragraph (a) of section 208 of the Act.”
5. In paragraph (b) of sub-rule (1) of rule 7, “Federal Court” shall be substituted for “High Court.”
6. The following shall be substituted for Rule 13 :—

“The Court may on the grant of a certificate order or continue any stay of execution upon such terms and conditions as the Court thinks just.”
7. In sub-rule (1) of Rule 15 the words “to the Federal Court” shall be substituted for the words “to the Court from which the appeal to His Majesty was preferred.”

PART V.
ORDER XXXIII.

SPECIAL REFERENCES UNDER SECTION 213 OF THE
GOVERNMENT OF INDIA ACT, 1935.

1. On the receipt by the Registrar of the order of the Governor-General referring a question of law to the Court, the Registrar shall give notice to the Advocate-General of India to appear before the Court on a day specified in the notice to take the directions of the Court as to the parties who shall be served with notice of the Special Reference, and the Court may, if it considers it desirable, order that notice of the Special Reference shall be served upon such parties as may be named in the order.

2. The notice shall require all such parties served therewith as desire to be heard at the hearing of the Special Reference to attend before the Registrar on the day fixed by the order to take the directions of the Court with respect to statements of facts and arguments and with respect to the date of the hearing.

3. Subject to the provisions of this Order, the procedure on a Special Reference shall follow as nearly as may be the procedure or proceedings before the Court in the exercise of its original jurisdiction, but with such variations as may appear to the Court to be appropriate and as the Court may direct.

4. After the hearing of the Special Reference, the Registrar shall transmit to the Governor-General the Report of the Court thereon.

5. The Court may make such order as it thinks fit as to the costs of all parties served with notice under these Rules and appearing at the hearing of the Special Reference.

PART VI.
ORDER XXXIV.

COSTS.

1. Subject to any provisions of any statute or of these Rules, the costs of and incidental to all proceedings shall be in the discretion of the Court.

2. Where it appears that the hearing of any suit or matter cannot conveniently proceed by reason of the neglect of the Agent of any party to attend personally, or by some proper person on his behalf, or of his omission to deliver any paper necessary for the use of the Court which ought to have been delivered, the Agent shall personally pay to all or any of the parties such costs as the Court may think fit to award.

ORDER XXXV.

TAXATION.

1. The Registrar shall be the Taxing Officer of the Court.

2. The Taxing Officer shall, in the absence of any specific provisions in these Rules, be guided by the rules and practice of the Supreme Court in England.

3. The Court may at any time determine the scale at which costs are to be taxed.

4. The Taxing Officer shall allow all such costs, charges and expenses as appear to him to have been necessary or proper for the attainment of justice or for defending the rights of any party, and shall not allow any costs, charges and expenses which appear to him to have been incurred or increased unnecessarily or through negligence or mistake.

5. The Court may, in any proceedings where costs are awarded to any party, direct payment of a sum in gross in lieu of taxed costs, and may direct by and to whom that sum shall be paid.

6. Where in the opinion of the Taxing Officer the maximum fee allowed by these Rules is insufficient or a fee ought to be allowed for any matter not provided for in these Rules, he may refer the matter to the Court, and the Court may make such order thereon as to the allowance of the whole or any part of the amount proposed by the Taxing Officer as it thinks fit.

7. Where the Taxing Officer is of opinion that any costs have been injuriously or unnecessarily occasioned by the negligence or improper conduct of any Agent, he shall not allow any charge for the same without the leave of the Court.

8. The Taxing Officer shall without delay bring to the notice of the Court any wrong charge which appears to him to have been wilfully made in any bill of costs.

9. In all cases of taxation as between party and party, the bill shall be lodged for taxation as between party and party and also as between Agent and client.

10. Every bill of costs lodged for taxation shall specify the exact number of folios contained in the bill lodged.

11. Every bill of costs shall be properly dated throughout and shall show in a column for the purpose the money paid out of pocket.

12. Every bill of costs shall be certified by the signature of the Agent from whose office it is issued.

13. The fees for taxation and registration of every bill of costs shall be paid in stamps when the bill is lodged for taxation.

14. Every bill of costs shall, wherever possible, be accompanied by vouchers, and every item of disbursement and the cause thereof shall be distinctly specified, and no payment out of pocket shall be allowed except on production of the necessary voucher, or in the case of Advocate's fees, without the signature of the Advocate that the fee has been paid.

15. Within three months from the date of the signing of the decree or order awarding costs or within such further time as the Taxing Officer may for good cause allow, the party to whom

the costs have awarded shall leave in the Registry an office copy of the decree or order, and shall lodge thereof the bill of costs and vouchers, and the Taxing Officer shall thereupon issue a summons fixing a date for the taxation.

16. Where within one month from the issue of the summons, no steps are taken by the party having the charge of the bill to serve the same the Taxing Officer may return the bill and vouchers, and shall not thereafter receive or tax the bill, except by order of the Court.

17. The Taxing Officer shall allow such costs of procuring the advice on evidence of an Advocate, and of employing an Advocate to settle pleadings and affidavits, as the Taxing Officer in his discretion thinks just and reasonable.

18. In cases of taxation as between Agent and client where the fees are payable by the client personally or out of a fund belonging entirely to him, the Taxing Officer shall allow as fees to Advocates all sums actually paid, but not exceeding those set out in the Second Schedule to these Rules, unless the written consent of the client is produced.

19. Where an Agent acts for different parties to the same suit, appeal or matter, only one set of attendances shall be allowed, unless the Court otherwise orders.

20. Where on the taxation of a bill of costs payable out of a fund or out of the assets of a company in liquidation, the amount of the professional charges and disbursements contained in the bill is reduced by a sixth part or more, no costs shall be allowed to the Agent lodging the bill for taxation for drawing or copying it, nor for attending the taxation.

21. Where on taxation of an Agent's bill of costs as between Agent and client, the amount of the bill is reduced by a sixth part or more, the Agent shall pay the costs of taxation including the cost of the Agent (if any) employed in contesting the bill and the same shall be deducted by the Taxing Officer; but

the Taxing Officer may certify any special circumstances relating to the bill or taxation and the Court may upon application by the Agent whose bill has been taxed make any such order as the Court may think just and equitable with respect to the costs of the taxation.

22. The Agent for each party shall be personally responsible to the Court for the payment of the fees for transcribing the deposition of witnesses examined on behalf of his client and for filing exhibits put in.

23. In proceedings in *forma pauperis* no costs will be allowed to the pauper against the other party unless the Court otherwise orders.

24. No fees shall be payable by a pauper to his Advocate or Agent, nor shall any such fees be allowed on taxation of costs against the other party, unless by order of the Court.

25. No Court fees shall be payable by an applicant to proceed in *forma pauperis* except the fee for the petition to proceed.

26. In the taxation of costs as between party and party, the costs of and incidental to the attendance of an Advocate on summonses or other matters in Chambers shall not be allowed unless the Court certifies that it was a fit case for the employment of an Advocate.

27. An Agent who has furnished a copy of a document made for the purposes of a suit to the other party or his Agent on payment of half or other due proportion of the translation charges shall also be entitled to charge in his bill a fee of 6 annas per folio for such copy.

28. Unless specially allowed by the Taxing Officer, no allowance shall be made for any work done before commencement of proceedings in the Court, except for a letter before suit, and instructions to sue, appeal or defend.

29. In every case of taxation as between Agent and client, the client shall be duly summoned by the Taxing Officer to attend the taxation, unless the Taxing Officer shall see fit to dispense with his attendance.

30. No retaining fee to an Advocate shall be allowed on taxation as between party and party.

31. Where in any case it is necessary for an Agent to employ a legal practitioner beyond the limits of the Province of Delhi, the Taxing Officer may allow such sum for the costs of that practitioner and of instructing him as the Taxing Officer may think reasonable.

32. Any party who is dissatisfied with the allowance or disallowance by the Taxing Officer of the whole or any part of the items in a bill of costs may apply to the Taxing Officer to review the taxation in respect thereof.

33. An application to review shall be made within a week from the date of the passing of the bill in the Taxing Office, and four days' notice thereof shall be given to the other party.

34. Objections in writing specifying concisely therein items or parts of the bill objected to and the grounds for the objections shall be served with the notice on the other party, and a copy thereof shall at the same time be carried in before the Taxing Officer.

35. The Taxing Officer may, where he thinks fit, issue, pending the consideration of any objections, a preliminary allowance for or on account of the remainder of the bill of costs.

36. Upon application to review the Taxing Officer shall reconsider his taxation upon the objections carried in and may, where he thinks fit, receive further evidence in respect thereof, and shall state in a certificate the grounds of his decision thereon and any special facts or circumstances relating thereto.

37. Any party dissatisfied with the decision of the Taxing Officer may not later than seven days from the date of the decision, or within such further time as the Taxing Officer or the Court may allow, apply to the Court for an order to review the decision of the Taxing Officer and the Court may thereupon make such order as may seem just; but the taxation of the Taxing Officer shall be final and conclusive as to all matters which have not been objected to in manner aforesaid.

38. No evidence shall be received by the Court upon the review of the Taxing Officer's decision which was not before the Taxing Officer when he taxed the bill or reviewed his taxation, unless the Court otherwise directs.

39. Except as otherwise specially provided in these Rules, or by any law for the time being in force, the Court fees to be taken in all proceedings in the Federal Court shall be those set out in the Third Schedule to these Rules.

40. Except as otherwise specially provided in these Rules the fees set out in the Fourth Schedule to these Rules may be allowed to Agents and officers of the Court.

41. The allowances to be made to witnesses per diem shall be such as the Taxing Officer may think reasonable having regard to the profession or status of the witness.

42. Where the witness is a party to the suit or matter, he shall not be entitled to any allowance, except for travelling, unless he has been subpoenaed by another party to give evidence or the Court otherwise orders.

43. Witnesses residing more than five miles from the place where the Court sits shall be allowed travelling expenses according to the sums reasonably and actually paid by them and shall also be allowed such a sum for subsistence money and carriage hire as the Taxing Officer, having regard to the daily allowances fixed by the scale, considers reasonable.

44. Every person summoned to give evidence shall have tendered to him with the summons a reasonable sum for his travelling expenses (if any) and for the first day's attendance and shall, if obliged to attend for more than one day, be entitled before giving his evidence, to claim from the party by whom he has been summoned the appropriate allowances and expenses for each additional day that he may be required to attend.

45. Witnesses who have not been paid such reasonable sums for their expenses as the Court allows by its rules may apply to the Court at any time in person to enforce the payment of such sum as may be awarded to them.

46. For the purposes of this Order, a folio shall consist of ninety words; seven figures shall be counted as one word; and part of a folio shall be reckoned as a folio.

PART VII.

MISCELLANEOUS.

ORDER XXXVI.

NOTICE OF PROCEEDINGS TO ADVOCATES-GENERAL, ETC.

1. The Court may direct notice of any proceedings to be given to the Advocate-General of India or to the Advocate-General of any Province, and any Advocate-General to whom such notice is given may appear and take such part in the proceedings as he may be advised.

2. The Advocate-General of India and the Advocate-General of any Province may apply to be heard in any proceedings before the Court, and the Court may, if in its opinion the justice of the case so requires, permit any Advocate-General so applying to appear and be heard, subject to such terms as to costs or otherwise as the Court may think fit.

ORDER XXXVII.

POWER TO DISPENSE WITH REQUIREMENTS OF RULES, ETC.

1. The Court may, for sufficient cause shown, excuse the parties from compliance with any of the requirements of these Rules, and may give such directions in matters of practice and procedure as it shall consider just and expedient.

2. An application to be excused from compliance with the requirements of any of the Rules shall be addressed in the first instance to the Registrar, who shall take the instructions of the Court thereon and communicate the same to the parties, but if in his opinion it is desirable that the application should be dealt with in open Court, he may direct the applicant to lodge it in the

Registry, and to serve the other parties with a notice of motion returnable before the Court.

3. The Court may enlarge or abridge any time appointed by these Rules, or fixed by any order enlarging time, for doing any act or taking any proceeding, upon such terms (if any) as the justice of the case may require, and any enlargement may be ordered, although the application therefor is not made until after the expiration of the time appointed or allowed.

4. The Court may at any time, either of its own motion or on the application of any party, make such orders as may be necessary or reasonable in respect of any of the matters mentioned in rule 8 of Order XIX of these Rules, may issue summonses to persons whose attendance is required either to give evidence or to produce documents, or order any fact to be proved by affidavit.

ORDER XXXVIII.

FORMS TO BE USED.

1. Every writ, summons, order, warrant or other mandatory process shall run and be in the name of His Majesty the King, Emperor of India, and shall bear the attestation of the Chief Justice, and shall be signed by the Registrar with the day and the year of signing, and shall be sealed with the Seal of the Court.

2. The forms set out in the Fifth Schedule to these Rules, or forms substantially to the like effect with such variations as the circumstances of each case may require, shall be used in all cases where those forms are appropriate.

ORDER XXXIX.

PROVISIONS WITH RESPECT TO SERVICE OF DOCUMENTS.

1. Except where otherwise provided by Statute or prescribed by these Rules, all notices, orders or other documents required to be given to, or served on, any person shall be served in the manner provided by the Code for the service of a summons.

2. Service of any notice, order or other document on the Agent of any party may be effected by delivering it to the Agent or by leaving it with a clerk in his employ at his place of business.

3. Service of any notice, order or other document upon a person who resides at a place within British India between which place and Delhi there is communication by registered post, may, where so directed by the Court, be effected by posting a copy of the document required to be served in a prepaid envelope registered for acknowledgment, addressed to the party or person at the place where he ordinarily resides.

4. A document served by post shall be deemed to be served at the time at which it would be delivered in the ordinary course of post.

5. Unless the Court otherwise orders, the service of any notice, order or other document shall be proved by the production of a certificate by the Registrar that appearance has been entered, or, where no appearance has been entered, by evidence showing that the notice, order or other document was served in the manner provided by the Code.

6. Where the notice, order or other document has been served through another Court, the service may be proved by the deposition or affidavit of the serving officer made before the Court through which the service was effected.

7. Service effected after Court hours shall for the purpose of computing any period of time subsequent to that service be deemed to have been effected on the following day.

ORDER XL.

NOTICES OF MOTION.

1. Except where otherwise provided by Statute or prescribed by these Rules, all applications which in accordance with these Rules cannot be made in Chambers shall be made on motion after notice to the parties affected thereby, but the Court where satisfied that the delay caused by notice would or might entail serious mischief, may make any order *ex parte* upon such terms as to costs or otherwise, and subject to such undertaking, if any, as the Court may think just, and any party affected by the order may move to have it set aside.

2. A notice of motion shall be intitled in the suit or matter in which the application is intended to be made and shall state the time and place of application and the nature of the order asked for and shall be addressed to the party or parties intended to be affected by it and their Agent or Agents, if any, and shall be signed by the Agent of the party moving, or by the party himself where he acts in person.

3. Save by the special leave of the Court, there shall be at least five days before service of motion and the day named for bringing on the motion.

4. The notice of motion, together with the affidavit or affidavits of service and the affidavit in support thereof shall be filed in the Registry immediately after service of notice, but not less than four days before the day named for bringing in the motion, and affidavits in answer or reply shall be filed in the Registry during office hours not later than 4 p.m. on the day preceding the day of the hearing.

5. Leave under the last preceding Rule to give short notice of motion may be obtained *ex parte* from the Court and the provisions in the last preceding Rule as to the filing of notice of motion and affidavit shall apply, save that they shall be filed not later than the next day after service of the motion.

6. Notice shall be given to the other party or parties of all grounds intended to be urged in support of, or in opposition to, any motion.

7. Save by leave of the Court, no affidavit in support of the application beyond those specified in the notice of motion, nor any affidavit in answer or reply filed later than the time prescribed in these Rules shall be used at the hearing or allowed on taxation.

8. Unless otherwise ordered the costs of a motion in a suit or proceeding shall be treated as costs in that suit or proceeding.

ORDER XLI

COMMISSIONS.

1. Order XXVI in the First Schedule to the Code with respect to commissions * shall apply except Rules 13 14, 19, 20, 21 and 22.

2. An application for the issue of a commission may be by summons in Chambers to all parties who have appeared, or *ex parte* where there has been no appearance.

3. The commissioner shall, if the Advocate or other person examining a witness so desires record a question disallowed by the commissioner and the answer thereto, but the same shall not be admitted as evidence until the Court before whom the deposition is put in evidence shall so direct.

* The words "to examine witnesses" were omitted by Federal Court (Amendment) Rules, 1938; *vide* Federal Court Notification No. F-23/I./38-F.C., dated 7th April, 1938, published in Punjab Gazette, 1938, Part II, page 305.

4. The Court may, when the commission is not one for examination on interrogatories, order that the commissioner shall have all the powers of a Court under Chapter X of the Indian Evidence Act to decide questions as to the admissibility of evidence, and to disallow any question put to a witness.

5. Unless otherwise ordered the party at whose instance the commission is ordered to issue, shall lodge in Court copies of the pleadings in the case within twenty-four hours of the making of the order and those copies shall be annexed to the commission when issued.

6. Any party aggrieved by the decision of the commissioner refusing to admit evidence or allow a question to be put may apply to the Court to set aside the decision and for direction to the commissioner to admit the evidence or to allow the question, but no such application shall be entertained if made later than seven days after the examination of the witness has been closed.

7. After the deposition of any witness has been taken down and before it is signed by him, it shall be read over and, where necessary, translated to the witness, and shall be signed by him and left with the commissioner who shall subscribe his name and the date of the examination.

8. Commissions shall be made returnable within such time as the Court may direct.

ORDER XLII.

SECURITY FOR COSTS.

1. In any suit, appeal, or matter before the Court, the Court may at any stage require any party to furnish security for costs.

2. Where security is required to be furnished, it shall be given to the Registrar or to such other officer as the Court may specially direct, and the Court may permit or order him to assign

the same to any other person for the purpose of suing thereon upon such terms as the Court may think fit.

3. Every person, other than a Guarantee Society, offering himself as a surety shall, where so required by the Registrar, produce his title deeds and vouchers and make an affidavit stating that he is worth the amount required.

4. A Guarantee Society, duly approved by the Court, may be accepted as surety upon its joining in a bond with the person ordered to give the security.

ORDER XLIII.

SAVING FOR INHERENT POWERS OF COURT.

Nothing in these Rules shall be deemed to limit or otherwise affect the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

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FIRST SCHEDULE.

SENIOR AND OTHER ADVOCATES.

1. A Senior Advocate shall not appear or plead without a junior.
2. A Senior Advocate shall not accept instructions to draw pleadings, affidavits, advice on evidence or to do any drafting work of an analogous kind, but this prohibition shall not extend to settling any such matters as aforesaid in consultation with a junior.
3. An enrolled Advocate may, if otherwise qualified, apply to be enrolled in the list of Senior Advocates and any fee payable by him on enrolment shall be reduced by the amount of the fee paid by him on his original enrolment.
4. A Senior Advocate appearing with another Senior Advocate senior to himself shall be entitled to, and shall be paid, a fee not less than two-thirds of the fee marked on the brief of that other Advocate, and a junior appearing with a Senior Advocate or with any other Advocate senior to himself shall be entitled to, and shall be paid, a fee not less than one-third and not more than two-thirds of the fee marked on the brief of the Senior or other Advocate, but this rule shall not apply in the case of a second junior.
5. A Senior Advocate may announce that he will not accept any brief, or any brief of a specified class, without a special fee of a named amount, in addition to the ordinary fee marked on the brief, and shall not so long as that announcement is in force accept a brief without that special fee.
6. An Advocate appearing with a Senior Advocate whose brief is marked with a special fee in accordance with the last preceding rule shall only be entitled to his proper proportion of the ordinary fee marked on the Senior Advocate's brief and not to any proportion of the special fee.
7. In matters not specially provided for in this Schedule, the rules adopted by the English Bar, and in particular the rules applicable to the relation between King's Counsel and members of the junior Bar, shall so far as possible be applied to Senior and other Advocates respectively, and any disputes arising under this Schedule shall be referred to and determined by the Chief Justice.

SECOND SCHEDULE.

FEEs TO ADVOCATES.

PART I.

		Fee on brief.	Refresher.
		Not exceeding	Not exceeding
Defended Appeals, Suits and References under Section 213.	Leading Advocate	60 G. Ms.	25 G. Ms.
	2nd Do.	40 G. Ms.	20 G. Ms.
	3rd Advocate if allowed.	20 G. Ms.	10 G. Ms.
Undefended Appeals (that is where Respondent has not entered appearance or has not filed a statement of facts and arguments).	One Advocate	20 G. Ms.	
Opposed motions or investigations in Court.	Leading Advocate	10 G. Ms.	{ No refresher unless specially allowed by the Taxing Officer.
	2nd Advocate if allowed.	7 G. Ms.	
Opposed applications or investigations in Chambers when certified.	One Advocate	10 G. Ms.	Do.
<i>Ex-parte</i> motions or Chamber applications when certified.	One Advocate	5 G. Ms.	
Hearing judgment in suits, appeals or special references where judgment was reserved.	One Advocate	2 G. Ms.	
Examination of witness before Commissioner.	Leading Advocate	10 G. Ms.	7 G. Ms.
	2nd Do.	7 G. Ms.	5 G. Ms.

PART II.

Drawing pleadings	...	5 G. Ms.
Settling pleadings	...	15 G. Ms.
Drawing or settling petitions of appeal	...	30 G. Ms.
Drawing or settling respondent's statement of facts and arguments	...	30 G. Ms.
Drawing or settling Special Case	...	10 G. Ms.
Drawing or settling affidavits or petitions not otherwise provided for	...	10 G. Ms.
Advice on evidence	...	10 G. Ms.

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Consultations—

Leading Advocate	...	5 G. Ms.
Second Advocate	...	3 G. Ms.
Conferences with Agents, if allowed	...	5 G. Ms.
General Retainer	...	5 G. Ms.
Special Retainer	...	2 G. Ms.

For the purposes of this Table a Gold Mohur shall be deemed to be the equivalent of Rs. 16.

THIRD SCHEDULE.

TABLE OF COURT FEES.

PART I.

ORIGINAL JURISDICTION.

	Rs.	A.	P.
1. Filing & registering plaint	...	50	0 0
2. Filing & registering written statement	...	25	0 0
3. Filing & registering written statement, pleading, set-off or counter-claim	...	50	0 0
4. Reply to a counter-claim	...	25	0 0
5. For examining & comparing documents with the original, each	...	2	0 0
6. For reducing into writing or, where taken down in short-hand, transcribing the deposition of each witness for each folio	...	0	10 0
7. Every final decree where its value or amount does not exceed Rs. 10,000	...	50	0 0
Where it exceeds Rs. 10,000	...	80	0 0
8. Decree for the defendant	...	10	0 0
9. Decree for the defendant in suits in which set-off is pleaded or counter-claim made and balance awarded to defendant, upon the amount of balance awarded, (Same as in decrees for plaintiff)	...		
10. Typed copies of transcript of depositions of witnesses for any party first copy per folio	...	0	3 0
Subsequent copies	...	0	1 0
11. Petition for admission of appeal to His Majesty in Council under section 208 (a) of the Act	...	30	0 0
12. Every requisition to draw up an order admitting appeal to His Majesty in Council under section 208 (a) of the Act, including fee for filing	...	15	0 0

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PART II. APPELLATE JURISDICTION.

	Rs.	A.	P.
1. Petition to proceed in <i>forma pauperis</i> ...	1	0	0
2. Lodging & registering appeal ...	40	0	0
3. Filing & registering concise statement of respondent ...	25	0	0
Where concise statement contains cross objections ...	35	0	0
4. Every decree for plaintiff on appeal in which lower court was in favour of defendant upon the value or amount of the decree as in suits ...			
5. Every decree for plaintiff on appeal where the amount decreed in lower court is increased upon the amount of the increase as in suits ...			
6. Decrees in other cases ...	50	0	0
7. Petition for leave to appeal to His Majesty in Council under section 208 (b) of the Act ...	30	0	0
8. Every requisition to draw up an order granting or refusing leave to appeal to His Majesty in Council under section 208 (b) of the Act ...	30	0	0
9. Every requisition to draw up an order declaring appeal to His Majesty in Council admitted, under section 208 (b) of the Act, including fee for filing same and fee for certificate ...	30	0	0
10. Estimate of costs of preparing paper book (where necessary) ...	16	0	0
11. Settlement of index and list of paper book for every 16 papers or part of 16 papers ...	1	0	0
12. Filing index and list of paper book per folio or part of a folio ...	1	0	0
13. Copies to be made over to appellants' agent for paper book, including examination per folio ...	0	8	0
14. Examining and passing final or press proof for each proof per folio ...	0	2	0
15. Approving each marginal note ...	0	4	0
16. Certifying transcript or printed record for every eight pages or part thereof (for appeal to Privy Council) ...	1	0	0

PART III.

MISCELLANEOUS.

1. Admission of Agent	...	100	0	0
2. Entering in register of suits, appeals or matters, name of representatives of a deceased party or of a substituted or added party, per folio	...	1	0	0
3. Summons or notice to defendant or his representative or a respondent to a petition or to a memorandum of appeal, each	...	5	0	0
4. Entering appearance	...	2	0	0
5. Authority to Agent	...	3	0	0
6. Filing fee for every document for which a fee is not specially provided including documents annexed thereto as exhibits, if any, or produced with plaint or used in evidence, each document	...	3	0	0
7. Every application to the Court or a Judge or the Registrar not specially provided for	...	10	0	0
8. Every requisition to draw up an order including fee for filing the order	...	10	0	0
9. Filing judgment and decree of the Privy Council	...	3	0	0
10. Every warrant, writ, summons or other process not specially provided for	...	5	0	0
11. Every certificate or report of a Judge or of Registrar on an investigation	...	10	0	0
12. Every other certificate for which a fee is not specially provided	...	3	0	0
13. Commission to examine witnesses or other commission	...	10	0	0
14. For production before a Judge or Registrar the records of any suit, matter or appeal	...	5	0	0
15. Production by an officer of Court in any other Court or before a Commissioner of records of any suit, matter or appeal exclusive of travelling expenses	...	8	0	0
16. For production of records by post exclusive of postage, registration and insurance fees	...	5	0	0

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17.	For every attendance on parties or their agents inspecting books and papers in Court	...	5	0	0
18.	For enquiry into sufficiency of security	...	8	0	0
19.	For every search or examination of records	...	3	0	0
20.	Every affidavit affirmed or sworn	...	1	0	0
21.	For every oath or affirmation administered to witness	...	3	0	0
22.	Each petition of review of judgment decree or order including filing	...	15	0	0
23.	Every exemplification of decree or other document in addition to the folio and other charges	...	15	0	0
24.	Every requisition for duplicate or other copy of any document	...	1	0	0
25.	For duplicate and other copies of any document per folio less requisition fee paid	...	0	10	0
26.	For amending pleadings or other proceedings under order of Court, per folio	...	2	0	0
27.	Upon all moneys or securities paid to the Registrar or deposited with him, a commission of 1 per cent. and $2\frac{1}{2}$ per cent. on interest drawn on invested money	...			
28.	Every requisition for translation	...	1	0	0
29.	Every written translation per folio less requisition fee paid	...	2	0	0
30.	Every summons by Taxing Officer	...	3	0	0
31.	Every certificate by Taxing Officer	...	2	0	0
32.	Taxing each bill not exceeding 10 folios	...	10	0	0
33.	For every other folio	...	1	0	0
34.	Registering every bill of costs	...	1	0	0
35.	Every special certificate of allowance where required	...	8	0	0
36.	Every certificate on review of taxation	...	10	0	0
37.	Entering and countersigning decree or order for payment of money in or out of Court	...	8	0	0
38.	For making and entering every certificate to be annexed to such decree or order	...	15	0	0
39.	For every search where no certificate is required to be annexed to such decree or order	...	5	0	0
40.	For every certificate of funds in Court	...	8	0	0

N.B.—In the case of Special References under section 213 of the Act such of the above fees as may be appropriate shall be charged.

FOURTH SCHEDULE.

FEEs TO AGENTS.

	Rs.	A.	P.
1. Drawing and engrossing authority to sue, appeal or defend	...	2	0 0
2. Receiving instructions for special affidavits or petitions (not to be allowed for affidavit made by agent or his clerk)	...	10	0 0
3. Drawing and engrossing affidavits, petitions and all other necessary documents (not specially provided for) exclusive of copies inserted therein up to 10 folios	...	8	0 0
Thereafter per folio	...	0	10 0
4. Drawing and engrossing Security Bond	...	8	0 0
5. Drawing and engrossing notice of motion and other necessary notices except notice to witnesses	...	8	0 0
6. Drawing and engrossing observations or instructions for advocate to accompany brief in interlocutory applications or for cross examination of witness on commission Rs. 8 to 12	...	0	0 0
7. Drawing and engrossing particulars of claim, set-off or counter-claim if required	Rs. 4 to 10	0	0 0
8. (1) Preparing engrossment or fair copy of documents (not specially provided for) whether written or typed, first copy per folio	...	0	8 0
(2) Preparing carbon copies of above, if legible, per folio	...	0	4 0
(3) Preparing lithographed or photographed copies or printed copies, per folio	...	0	8 0
9. Serving every necessary notice, summons to a witness or other judicial process, which may be served by Agent, when within town of Delhi	...	2	0 0
When outside Delhi (besides travelling expenses actually incurred) per day	...	8	0 0
10. Attendance on presentation of plaint	...	10	0 0

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	Rs.	A.	P.
11. Receiving, filing or depositing any papers from or in the Registry	...	1	0 0
12. Attendance before Court or Judge or an officer of Court not otherwise provided for	...	5	0 0
13. Attending application for summons to witnesses or to parties	...	2	0 0
14. Attending every application to the Court or a judge in Chambers	...	12	0 0.
15. Attending every application to Registrar if contested	...	12	0 0
If uncontested	...	8	0 0
16. Attendance on client or opposite party at the office of the Agent of either party where a letter would not suffice	Rs. 8 to	12	0 0
Where a letter would suffice	...	4	0 0
17. Receiving and perusing necessary letters	...	2	0 0
18. Perusing documents received from opposite party or obtained from Court, where necessary, in the discretion of the Taxing Officer up to	...	8	0 0
19. Perusal & approval of draft orders or decrees	...	4	0 0
20. Attending execution of Security Bond at the Agent's house or office or at the Court house	...	4	0 0
21. Attending Court upon the swearing of every necessary affidavit (including attendance to have same explained)...	...	1	0 0
22. Attendances, if necessary, inspecting documents books and accounts, by agent per hour	...	10	0 0
Attendances, if necessary, inspecting documents books and accounts, by clerk per hour	...	2	0 0
23. Attending searches in Registry—			
Common :	...	2	0 0
Special :	Rs. 4 to	10	0 0.
23A. Attending bespeaking, obtaining and filing copies of decrees or orders in the Registry	...	2	0 0
24. Attending advocate, delivering brief with instructions	...	2	0 0

	Rs.	A.	P.
Attending advocate, delivering additional briefs	...	1	0 0
25. Attending advocate paying fee	...	2	0 0
26. Attending advocate fixing time for consultation or conference	...	2	0 0
27. Attendance when suit, appeal or matter or motion is on day's list for hearing—if not called on—per day	...	2	8 0
28. Attending Court to hear judgment where judgment is reserved, if advocate is not briefed	...	20	0 0
If advocate is briefed	...	10	0 0
29. Attending taxation by Agent, personally, per hour	...	4	0 0
By clerk, per hour	...	2	0 0
30. Attending Judge in Chambers or Registrar at hearing or enquiry or on review of taxation before Taxing Officer if advocate is not briefed, per hour	...	10	0 0
Where advocate is briefed, per hour	...	5	0 0
31. Attending on local enquiry or commission to examine witnesses within limits of Delhi town, where personal attendance of agent is required, per hour	...	12	0 0
Where attendance by clerk is sufficient, per hour	...	2	0 0
Within the limits of Delhi town an additional fee for going & returning and loss of time according to distance, from	Rs. 3 to	8	0 0
Outside the limits of Delhi town an additional fee for going & returning & loss of time for every mile, provided the total amount shall not exceed Rs. 80 per day and Rs. 125 per day and night	...	2	0 0
32. Writing necessary letters	...	4	0 0
33. Writing letters to witnesses for each witness	...	2	0 0
34. Writing letter of instructions to local agent attending examination of witness on commission when agent cannot attend personally	...	10	0 0
35. Necessary translations made at the office of agent per folio		0	10 0

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		Rs.	A.	P.
36.	Receiving instructions to sue, appeal or defend	Rs. 16 to	32	0 0
37.	Instructions to advocate to draw pleadings	Rs. 20 to	50	0 0
38.	Instructions to advocate to draw interrogatories	...	8	0 0
39.	Instructions to advocate to draw a special case	...	10	0 0
40.	Drawing special case	...	16	0 0
41.	Drawing petition for admission of appeal to His Majesty in Council	...	25	0 0
42.	Drawing petition for leave to appeal to His Majesty in Council	Rs. 25 to	40	0 0
43.	Drawing interrogatories	...	25	0 0
44.	Bill of costs in defended suits, appeals or matters	...	10	0 0
	In undefended suits, appeals or matters	...	5	0 0
45.	Conference with advocate	...	12	0 0
46.	Consultation with advocate	...	12	0 0
47.	Collecting & taking down evidence at the discretion of the Taxing Officer not exceeding	...	100	0 0
48.	Attendance at hearing of suits, appeals or matters if contested, each day	Rs. 20 to	60	0 0
	If uncontested, each day	...	12	0 0
49.	The following costs may be allowed as between agent and client but are not to be allowed as party and party:—			
	(1) Conference with Counsel before appeal if sanctioned or directed by client	...	12	0 0
	(2) Other conferences with Counsel not allowed as between party and party if sanctioned or directed by client	...	8	0 0
	(3) Expenses of Agent incurred with the sanction of client in collecting and taking down evidence and defraying expenses of witnesses other than those hereinbefore provided			Discretionary.

Rs. A. P.

- (4) Every attendance by Agent's clerk on purdah woman, or client unable to attend Court or Agent's office to obtain signatures and verifications to pleadings or proceedings required to be verified and to get affidavits sworn or affirmed where within limits of Delhi town ... 8 0 0
Similar attendance by Agent in person when specially directed by client ... 20 0 0
- (5) Every other attendance by Agent's clerk at any place other than Court House or Agent's office or house at request of client where attendance is within limits of Delhi town. ... 8 0 0
Similar attendance by Agent in person where necessity is shown ... 20 0 0
- (6) For every attendance by Agents in person beyond the limits of Delhi town under either of the last two preceding clauses agents shall be allowed for every extra mile or portion of a mile beyond such limits additional fees to cover travelling expenses and loss of time per mile provided the total amount including fee for going and returning shall not exceed Rs. 80 2 0 0
For similar attendance by Agent's clerk additional fees shall be allowed at half the rates allowable to agents.
50. Making transcript or copying papers for the press where necessary for preparing paper book, including examination per folio ... 0 10 0
51. Printing paper book, actual cost at a reasonable rate to be allowed by the Taxing Officer ...
52. Examining proofs per folio ... 0 5 0
53. Instructions for brief (including perusing of papers) whether on final disposal at first hearing settlement of issues, final trial or on appeals on references, or on motions Discretionary.
54. Attendance by respondent's agent at the office of the appellant's agent to examine the printed copy of the trans-

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	Rs.	A.	P.
cript with the official copy for every hour or part of an hour	...	8	0 0

FEEs TO OFFICERS OF COURT.

1. Fees of interpreter for explaining at the house of a party or any place other than the Court House pleadings and other documents except affidavits or affirmations where not exceeding 20 folios	...	8	0 0
Where over 20 folios, for every 10 folios or part thereof		2	0 0
2. Fees of Registrar for taking bonds and of Commissioners for taking affidavits or affirmations at the house of a party or any place other than the Court House	...		
For the first affidavit, oath or affirmation or bond where within the limits of the Province of Delhi	...	16	0 0
Where beyond such limits	...	24	0 0
For every affidavit, oath or affirmation or bond taken at the same time and place after the first in the same suit, appeal or matter	....	8	0 0
3. Fees of interpreter for explaining bonds, affidavits or petitions at the house of a party or any place other than the Court House			Half the fees allowed to Registrar or Commissioner,

FIFTH SCHEDULE.

FORMS.

No. 1.

Form of Oath by Translator.

(ORDER II, RULE 4.)

In the Federal Court.

In the matter of _____, a translator.

I _____ solemnly affirm and say that
I will translate correctly and accurately all documents given to me for
translation.

solemnly affirmed before
the

19 .
Registrar.

No. 2.

Application for Production of Records.

(ORDER IV.)

In the Federal Court.

[Appellate Jurisdiction]

[Original Jurisdiction]

No. _____ of 19 .

[Appellant]

A. B.

[Plaintiffs]

vs.

[Respondent]

C. D.

[Defendants]

To
The Registrar, Federal Court.

SIR,

Please produce the records of the above suit before
on

[Signed]

Dated this _____ day of _____ 19 .

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No. 3.

Certificate of Enrolment of Advocate.

(ORDER VII.)

No.... .

THIS IS TO CERTIFY that
has this day been admitted and enrolled [as a Senior Advocate] [as an
Advocate] [as an Agent] in the Federal Court.

Dated this day of , 19 .

Registrar.

No. 4.

Undertaking by Agent.

(ORDER VII.)

I, the undersigned, do hereby declare that I will observe, submit to, perform, and abide by all and every orders, rules, regulations, and practice of the Federal Court now in force, or hereafter from time to time to be made, and also to pay and discharge, from time to time, when the same shall be demanded, all fees charges, and sums of money due and payable in respect of any appeal, cause or other matter in and upon which I shall appear as such agent; and I undertake not to appear or plead before any High Court so long as my name remains upon the Roll of Agents in the Federal Court.

(Signed)

Registrar.

Dated this day of , 19 .

No. 5.

Form of Summons for an order in Chambers.

(ORDER VIII.)

In the Federal Court.

[Appellate Jurisdiction]

[Original Jurisdiction]

No. of 19 .

[Appellant]

A. B.
[Province of A. B.]

[Plaintiffs]

vs.

C. D.

[Defendants]

[Province of C. D.]

[Respondent]

Let all parties concerned attend before
in Chambers in the Court House, [New Delhi,] on the day of
19 , at O'clock in the forenoon on the hearing of an
application on the part of [state on whose behalf the application is made
and the precise object of the application].

Dated this day of , 19 .

This summons was taken out by A. Agent for the applicant.

To [insert the names of the Agents for the persons to be served e.g.
C.D. Agent for the defendant].

To the plaintiff or defendant or appellant G.H. or as the case may be
Grounds :

[Here insert a list of the materials relied on e.g., affidavit of X.Y.Z. etc.].

No. 6.

Notice of Appeal from Registrar.

(ORDER VIII.)

In the Federal Court.

[Appellate Jurisdiction]

[Original Jurisdiction]

No. of 19 .

Take Notice that the above named plaintiff [or as the case may be]
intends to appeal against the decision of the Registrar given on the
day of [ordering or refusing to order] that .

And further take notice that you are required to attend before the Judge in Chambers at the Court House, [New Delhi,] on the day of _____ in the forenoon, on the hearing of an application by the said plaintiff [or as the case may be] that [here state the order sought to be obtained]. And further take notice that it is the intention of the said plaintiff [or as the case may be] to attend by an Advocate.*

(Signed, etc.)

To etc.

No. 7.

Memorandum of Appearance in Person..

(ORDER XI)

Appeal No. _____ of 19 ____

*In the Federal Court.
Appellate Jurisdiction.*

A. _____ B. _____

vs.

Appellant.

C. _____ D. _____

Respondent.

To

The Registrar.

Please enter appearance for me [name of respondent] the respondent above-named.

Dated this _____ day of _____, 19 ____

Signature of respondent.

Address for Service.

*The last sentence to be omitted if an Advocate is not to attend.

No. 8:

Notice to Parties of the day fixed for hearing of appeal.

(ORDER XII)

Appeal No. _____ of 19 ____

In the Federal Court.

Appellate Jurisdiction.

A. B.

Appellant

vs.

C. D.

Respondent

To

(Names of parties and their Agents)

Take notice that the above appeal is fixed for hearing on the day of _____ and shall be taken up for hearing by the Court on that day or as soon thereafter as may be convenient to the Court.

Dated this _____ day of _____, 19 ____
Registrar.

No. 9.

Summons for disposal of suit.

(ORDER XIX.)

Suit No. _____ of 19 ____

In the Federal Court.

Original Jurisdiction.

Province of A. B.

Plaintiffs.

vs.

Province of C. D.

Defendants.

GEORGE VI, by the Grace of God, of Great Britain, Ireland, and of the British Dominions beyond the seas, King, Emperor of India,

To

GREETING :

Whereas the above-named Plaintiffs have instituted a suit in this Court against you claiming

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you are hereby required to cause an appearance to be entered for you in the Registry of this Court within twenty-eight days from the service upon you of this summons, exclusive of the day of such service; and you are summoned to appear before this Court by an Advocate duly instructed by an Agent of the Court to answer the plaintiff's claim on the day the case is set down for hearing, upon which date you must be prepared to produce all your witnesses and all documents in your possession or power upon which you intend to rely in support of your case.

And you are hereby required to take notice that in default of your causing an appearance to be so entered, the suit will be liable to be heard and determined in your absence.

Witness _____, Chief Justice of India, the _____ day of _____ in the year one thousand nine hundred and _____

Agent :

Address :

Registrar.

No. 10.

Memorandum of Appearance through Agent.

(ORDER XIX).

In the Federal Court.

[Appellate Jurisdiction]

[Original Jurisdiction]

No. _____ of 19 ____.

[A. B.]

[Appellant.]

Province of A.. B.

Plaintiffs.

[C. D.]

[Respondent.]

Province of C. D.

Defendants.

To

The Registrar,

Please enter an appearance for the above-named defendant [or the respondent, as the case may be]

Dated this _____

day of _____

19 ____.

(Signature of Agent)

Place of business of Agent.

No. II.

Writ of Commission.

(ORDER XLI.)

Suit No. of 19 .

In the Federal Court.

Original Jurisdiction.

Province of A. B. *Plaintiffs.*

Province of C. D. *Defendants.*

GEORGE VI, by the Grace of God, of Great Britain, Ireland, and of the
British Dominions beyond the seas, King, Emperor of India,

To

The Commissioner appointed to examine the undermentioned witnesses
on behalf of

GREETING :

Know ye, that we in confidence of your prudence and fidelity, have
appointed you, and by these presents do give unto you full power and
authority, to swear or affirm and diligently to examine *viva voce*

as shall be produced before you as witness
on behalf of the said in a certain suit No. of
now pending in our Federal Court (wherein

) and we further command you that
you do at certain days and places to be appointed by you for that purpose
of which reasonable notice shall be given to all parties cause the said
witness[es] to come before you and then and there examine and cross-exa-
mine such witness[es] either upon oath or solemn affirmation, which we
hereby give you full power and authority to administer to such witness in
the form firstly specified at the foot hereof, and that you do take such exami-
nation and reduce the same into writing on paper; and when you shall
have so taken the same you are to send the same before the [returnable
date as given in the order for the issue of this commission] to the
Registrar of our said Federal Court closed up under your Seal together
with such documents as shall be spoken to and marked exhibits and this
writ.

LAW OF PROTECTION OF INDIAN STATES

And we further empower you to appoint, if necessary, a competent interpreter to interpret such of the proceedings under this commission as you may deem necessary to have interpreted from or into the English language. And we further command you that the interpreter employed in interpreting the depositions of the said witness[es] to be examined by virtue of these presents shall, before he be permitted to act as such interpreter as aforesaid, take the oath or affirmation lastly specified at the foot hereof which we hereby give you full power and authority to administer to such interpreter. And we do lastly order that the parties to this suit do appear before you in person or by their agents or pleaders. Witness

, Chief Justice of India, the

day of

in the year one thousand

nine hundred and

Agent for

Agent for

[Names of witnesses to be examined.]

Registrar.

NOTE 1.—The Commissioner shall not be bound to execute this commission unless such a sum as he thinks reasonable be deposited with him for the expenses of executing the same, and also of summoning the witnesses and defraying their travelling and other expenses.

NOTE 2.—After the deposition of any witness has been taken down, and before it is signed by him, it shall be distinctly read over, and, where necessary, translated to the witness in order that mistakes or omissions may be rectified or supplied. The deposition shall be signed by the witness and left with the Commissioner who shall subscribe his name and date of the examination.

Form of the oath or affirmation to be administered to the witness.

I swear in the presence of Almighty God [or solemnly affirm] that the evidence which I shall give in this case shall be true, that I will conceal nothing, and that no part of my evidence shall be false.

So help me God.

Form of the oath or affirmation to be administered to the interpreter.

I swear in the presence of Almighty God [or solemnly affirm] that I understand and speak the and English

languages, and that I will well and truly and faithfully interpret, translate and explain to the witness to be produced before the Commissioner, all questions and answers and all such matters as the Commissioner may require me to interpret and explain.

So help me God.

N. B.—The words "So help me God" are to be omitted when an affirmation is administered.

The execution of this commission appears by the schedule hereunto annexed.

Commissioner.

Dated the thirtieth day of November, nineteen hundred and thirty-seven.

MAURICE GWYER, c. j.
S. M. SULAIMAN, j.
M. R. JAYAKAR, j.

I approve these rules.

LINLITHGOW,

Governor-General of India.

NEW DELHI;

Dated the 2nd December 1937.

MAURICE GWYER,
Chief Justice of India.

APPENDIX VII.

The Federal Court Judges Travelling Allowance Rules, 1937.*

In exercise of the power conferred by paragraph 22 of the Government of India (Federal Court) Order, 1937, the Governor-General in Council is pleased to make the following rules regulating the travelling allowances of the Chief Justice and Judges of the Federal Court :—

1. (1) These rules may be called "The Federal Court Judges Travelling Allowance Rules, 1937."
- (2) In these rules, except where it is otherwise expressly provided or the context otherwise requires "Judge" means a Judge of the Federal Court and includes the Chief Justice, an acting Chief Justice and an acting Judge.
2. (1) A Judge who at the date of his appointment to the Federal Court was in the service of the Crown in India, may, on a journey by railway to join his post, at his option (a) draw travelling allowance at the rates or enjoy travelling facilities, provided for a journey on transfer by the rules applicable to him immediately before his appointment, or (b) travel at Government expense in a reserved first class compartment.
- (2) A Judge who avails himself of alternative (b) shall pay to Government the fare which he would have paid if no accommodation had been reserved and shall, in addition, pay in cash, to the station master of the station from which the journey commences, the fares for any members of his family ac-

**Vide* Government of India Notification No. F. 38-8-37, dated 23rd. September, 1937, published in Gazette of India, Part I, dated 25th September, 1937.

companying him, whether they share his reserved accommodation or not. When Government pays full tariff rates for the accommodation all such fares shall be credited to Government.

3. When a person who is not in the service of the Crown in India is appointed as a Judge he may, when travelling by railway to join his post, travel in an inspection carriage in the case of the Chief Justice or in a reserved first class compartment in other cases on the conditions prescribed in sub-rule (2) of rule 2.
4. A Judge is entitled when travelling on duty to the same travelling allowance and the same privileges as regards reservation of a first class compartment when travelling by railway as are admissible to a Secretary to the Government of India, other than the Secretaries to the Government of India in the External Affairs and Political Departments, under the rules applicable to him, provided that the Chief Justice of India shall be treated as a Secretary to the Government of India in the External Affairs Department for the purposes of those rules. The Chief Justice and Judges will be entitled to a daily allowance at the rate of Rs. 15 per day during any period including Sundays and holidays for which the Federal Court sits at any place outside Delhi, and, when travelling by road, to a mileage allowance at the rate of Re. 1 per mile.

* [They will also be entitled to—

- (a) the haulage of a motor car by passenger train at owner's risk,

*The words within brackets were added by Government of India Notification No. 38-8-37, dated 24th Feb., 1938, published in Gazette of India, Part I, dated 5th March, 1938, page 260.

(b) fares at lowest class rates of personal servants not exceeding four, and

(c) freight for transport by goods train of personal effects not exceeding 60 maunds in weight].

5. When the Chief Justice or a Judge travels by railway—

*(i) when proceeding on or returning from leave (including vacation spent in or outside India), or

(ii) when returning from the service or proceeding to join another post after resigning office, the Chief Justice may travel in an inspection carriage and a Judge in a reserved first class compartment on the conditions described in sub-rule (2) of rule 2.

†[These facilities will be available up to and from the port of embarkation or debarkation or the place of residence in India, as the case may.]

*This clause was substituted for the original clause, *ibid.*

†The words within brackets were added, *ibid.*

APPENDIX VIII.

Questions asked by the Marquess of Salisbury on the position of the States in Federal Finance Scheme of the White Paper, and replies thereto by the Secretary of State for India [16th December 1933].

QUESTIONS BY THE MARQUESS OF SALISBURY.

It has been repeatedly stated that the States are not prepared to pay direct taxation until after all other sources of Federal revenue required to meet Federal expenditure have been exhausted, taking into account all possible savings through economy, and until therefore a condition of emergency has arisen. Then and then only will they directly contribute on a prescribed basis. This limitation, however, on direct taxation in the States is not to be held to apply to the Corporation Tax, at any rate in the case of a majority, I think a great majority, of the States. But it should be added, from the White Paper itself, that this tax for the first ten years is to be leviable only from British India. I am sure it will be agreed that it is most important that the Committee should realise the exact effect of the position of the States. I take it to be as follows :

1. Except in a state of emergency the States will not undertake to pay anything by way of direct taxation to Federal revenue for the first ten years.

2. After ten years they, or at any rate most of them, agree to be assessed to Corporation Tax on an equal footing with British India, though, they reserve to themselves the right to pay an equivalent sum in place of actually levying the Corporation Tax.

Certain further questions arise, but they are subsidiary to these two main propositions.

3. As apparently, if all the Federal units are to bear an equal burden, the Income Tax being not leviable on the States cannot be used for Federal purposes except in an emergency, how is it proposed that the Federal Budget shall be balanced for the first ten years?

4. After ten years is it contemplated that the Federal Budget should if necessary be balanced by the Corporation Tax, and is the scope of this tax sufficiently productive and sufficiently equitable to be adequate for this purpose having regard to the unequal distribution of Companies in the different units of the Federation?

5. How is it intended that the prescribed basis on which in an emergency the Income Tax is to be levied from the States should be calculated?

6. How is it contemplated that the Assessment of Companies in the States is to be made and verified for the purposes of the Corporation Tax?

If the statements in paragraphs 1 and 2 are accurate and the Secretary of State is good enough to answer the questions in the remaining paragraphs, we shall have a clearer idea of the financial position of the States in the proposed Federation.

MEMORANDUM BY THE SECRETARY OF STATE FOR INDIA IN

REPLY TO THE ABOVE.

Questions Nos. 1 and 2.—Numbers 1 and 2 of Lord Salisbury's questions correctly state the position, but the following comments may be made by way of further elucidation. First it may be well to recall to the Committee the main heads of revenue at the Centre as given in Sir Malcolm Hailey's note, Record No. 1*. These are repeated for convenience of reference.

*These figures give the budget estimate of Central Revenue (net) for 1933-34, and are not, of course, an estimate for the first year of Federation; but they will serve adequately as an illustration for the purpose of this note.

	Rs. Crores.	£ Millions.
Customs (net)	... 50·27	37·70
Income taxes (net)	... 17·21	12·91
Salt (net)	... 7·60	5·70
Other taxes (net)	... ·60	·45
	<hr/>	<hr/>
Net tax revenue	... 75·68	56·76
Opium (net)	... ·63	·47
Railways (net)	... Nil	Nil
Currency and Mint (net)	... 1·11	·83
Payments from States	... ·74	·56
	<hr/>	<hr/>
Total	... 78·16	58·62
	<hr/>	<hr/>

It will be seen that "direct taxation" is in practice equivalent to taxes on income and that these form only a little over one-fifth of the total net revenue. It also will be remembered that during the first ten years to which question No. 1 refers, the tributes from the States (about half a million pounds a year) will only be in process of gradual reduction *pari passu* with the remission of income tax to the Provinces, and that, accordingly, there will during this period at least be a contribution from some States otherwise than through "indirect taxation." It may also be well to add a comment on the phrase "state of emergency" in connection with the States' liability to contribute to taxes on income. It is true that it is only contemplated that the States should participate in special surcharges on income tax and that these special surcharges are not intended to be used except in times of difficulty when other sources open to the Federation have proved insufficient.† But the use of the term "emergency" must not be held

† Sir A. Bydari adds in his statement of 27th July the not unreasonable condition that the programme of remission of income tax to the Provinces should be suspended.

to cover only grave financial crises.

Question No. 3.—It is evident from this question that there is a misconception in the minds of some members of the Committee. It is not proposed under the White Paper scheme that, because the States will only contribute to taxes on income through special surcharges (if and when these are imposed) the Federal Government should therefore forego the right to keep any part of the taxes on income raised from British India and should surrender the whole of it to the Provinces. The proposals in the White Paper contemplate that a certain percentage of the taxes on income should be permanently assigned to the Federation and the determination of this percentage is left to be fixed subsequently by Order in Council. Unless financial conditions change for the better more radically than we have any reason to expect, I doubt whether it will be possible to fix the Federal permanent share of income tax at less than the maximum figure mentioned in the White Paper, *viz.* 50 per cent. As regards the balance of taxes on income, under the White Paper proposals as they stand, the Federation has the power of retaining the whole for three years, followed by a process of gradual remission to the Provinces extending over the next seven years. So that for three years the Federation has the whole Income Tax, and by the end of ten years, the Federation would have half and the Provinces half. There is a power in the Governor-General to hold up this programme and so retain, for the time being, more for the Centre. A point to which the Committee ought in due course to give careful attention is whether the most suitable method, in the existing financial conditions is that proposed in the White Paper, *viz.* a predetermined programme with power to suspend, or machinery by which the programme is left to be settled at a later date. However that may be, it will be plain that it is contemplated that although the States will not be contributing, the Federation should retain permanently a large portion of the taxes on income and only remit the remainder to the Provinces gradually as financial conditions admit.

The implication in question No. 3 is, apparently, that such a proposal is, at all events theoretically, unfair seeing that the Federation uses a source of taxation derived from some of the units only. At the second and third Round Table Conferences there was a good deal of discussion about the "equality of burden" as between the States and British India. The true position, viewed from this aspect, is not very easy to assess. Some of the many factors that have to be taken into consideration are the following :—

- (i) Part of the taxes on income are in fact not collected solely from British India. Perhaps the most important head of this kind is income-tax deducted at the source on the interest on Government Securities which are widely held in the States as well as in British India.
- (ii) If certain revenues are provided by British India only, *per contra* part of the Federal expenditure is only for British India, such as :—
 - (a) subsidies to deficit provinces other than the N.-W.F.P. ;
 - (b) a share of certain pre-Federation pensions ;
 - (c) possibly also a share of the service of pre-Federation debt.

(This is a contentious question on which there has been much argument on one side and the other.)

- (iii) The States make certain contributions in kind to Defence Expenditure, to which there is no parallel in British India.

The general conclusion which the Government reached, with a considerable measure of assent from the Indian delegates, was that it was very important to get away from any attempt to balance factors of this kind and to base their proposals for the allocation of resources between the Federation and Provinces

(and in particular allocation of taxes on income) according to actual financial and economic necessities rather than to attempt to produce theoretical equality of burden between British India and the States. I regard as one of the most important of such necessities, an arrangement by which, eventually, both Provinces and Federation will have an element of direct taxation (*viz.* taxes on income) included among their resources.

I do not propose to make any attempt to give a precise estimate as to what would be the percentage of taxes on income drawn solely from British India which the Federation could retain without violating the principle of equality of burden, but assuming that the percentage retained is fixed as high as 50 per cent., there would probably be, in relation to taxes on income, a permanent inequality though not of great magnitude, and during the first 10 years, or longer period if the programme of remission to the Province is prolonged, there will be a larger inequality. At first sight this may appear unfair to British India, but it is impossible in the circumstances of India to proceed straight to an equality of position between the States and British India, when they have been so different in the past.

The really important feature of the Federal proposals in the financial field is not the failure to secure from the States their full contribution in relation to direct taxation but the dropping of their claim to a share in customs revenue which, backed to some extent by the Butler Committee, was becoming a problem of considerable gravity.

Question No. 4.—The present yield of the Corporation tax is about £1½ millions a year or approximately one-tenth of the total yield of taxes on income. No estimate has been made of the possible yield from Companies in the States. The proposal to federalise permanently this head of taxes on income did not in any way flow from the conception that it would be an item which was capable of balancing the Federal Budget. It is possi-

ble that it is a tax that may be developed, but it is by no means free from objections and it may well prove that it will not in future play a much more important part than it does now. The reason why this was singled out for special treatment was that it was the one form of taxes on income (other than special surcharges) in which most of the States at all events showed some disposition to be ready to participate. The advantage to be derived from their participation is really less directly financial than economic since it may help to prevent any future development in the direction of companies establishing themselves in the Indian States rather than in British India in order to avoid the incidence of the tax.

Question No. 5.—Since it will not be possible to form any accurate estimate of the income of States' subjects which would be assessable to income-tax if they were all liable under the British Indian Income Tax law, it is plain that some more or less arbitrary method will have to be employed for calculating the States' share of special surcharges when these are imposed. No method is altogether free from difficulty. The most promising proposal seems to be the following. An estimate would be made of the total revenues of each federating State and also of the British India Provinces on as nearly an equal basis as may be possible. The sum to be paid by the States as their counterpart to the special surcharges would then be the yield of surcharges in British India multiplied by the ratio of the sum of the States' revenues to the sum of the British India Provinces' revenues. The amount thus determined for the States would be divided among the States' units in proportion to their revenues. Probably percentages based on a method of this kind could be fixed for a period of five years at a time. The duty of revising the percentages in the light of new revenue figures might be laid on the Auditor-General.

Reference may be made on this question to paragraph 113 of the Report of the Federal Finance Committee, presided over by

Lord Eustace Percy, in which is discussed the problem of allocation among units of "emergency contributions" of an analogous though slightly different kind.

Question No. 6.—Except where a State elects to pay Corporation Tax direct, the Companies in the States would be assessed either by Federal Officers or by States Officers acting on behalf of Federal Officers. In those cases where a State prefers that tax should not be paid direct by the Company but by the State, the latter choosing its own form of raising equivalent revenue, the power of assessing the sum to be paid by the State rests with the Federal Government. Since the Companies will, under the Federal Company Law, have to produce balance sheets, there will be some material, though no doubt of an inadequate kind, for the Federal Government to make its assessment. No doubt they will proceed by the method, when inadequate statistics are forthcoming, of propounding an assessment and leaving it to the State to produce information to justify a reduction,

APPENDIX IX.

*Report of the Select Committee on the Indian States (Protection) Act, XI of 1934.

The following Report of the Select Committee on the Bill to protect the Administrations of States in India which are under the suzerainty of His Majesty from activities which tend to subvert, or to excite disaffection towards, or to interfere with such Administrations was presented to the Legislative Assembly on the 14th February, 1934 :—

WE, the undersigned, Members of the Select Committee to which the Bill to protect Administrations of States in India which ^{Papers I—}IV. are under the suzerainty of His Majesty from activities which tend to subvert, or to excite disaffection towards, or to interfere with such Administrations, was referred, have considered the Bill and the papers noted in the margin and have now the honour to submit this our Report, with the Bill as amended by us annexed thereto.

2. *Long title and preamble.*—The verbal alteration made here is in consequence of the change made in clause 4.

Clauses 2 and 3.—We are of opinion that the object aimed at by clause 3 of the Bill can more suitably be attained by the creation of a separate offence in this Bill than by an amendment of the Indian Penal Code. This decision renders clause 2 of the Bill unnecessary. We have also provided for the offence now created a penalty somewhat less severe than that imposed by section 121-A of the Indian Penal Code for the cognate offence when committed in relation to a government in British India.

Clause 4 (re-numbered clause 3).—We have met certain criticisms levelled against the provisions of this clause by inserting an *Explanation* saving from the mischief of the new clause (j) of sub-section (1) of section 4 of the Indian Press (Emergency

**Vide* Gazette of India, Part V, dated 17th February, 1934, pages 35-36.

Powers) Act, 1931, statements of fact made without evil intention. We have also introduced a slight adjustment of section 23 of that Act to meet the circumstances which might arise from the exercise of powers under the Act by the Governor-General in Council at the headquarters of the Central Government in respect of a press situated in a province.

Clause 5 (re-numbered clause 4).—We have substituted for the words “movement for the promotion of assemblies” the more explicit expression “attempts are being made to promote assemblies,” and have replaced the rather vague expression “cause interference with the Administration” by the more definite expression “cause obstruction to the Administration.” We have also confined the exercise of the powers under this clause in Presidency-towns to Chief Presidency Magistrates.

Clause 6 (re-numbered clause 5).—We have amended this clause in consonance with the decisions reached on clause 5, and have inserted the qualifying words contained in section 144 of the Code of Criminal Procedure, 1898.

Clause 7 (re-numbered clause 6).—We have inserted the word “wilfully” to meet certain criticisms received when the Bill was circulated.

B. L. MITTER.

H. G. HAIG.

B. J. GLANCY

S. C. MUKHERJI.

G. N. MUJUMDAR.

*ABDUR RAHIM.

SHER MOHD. KHAN.

*K. C. NEOGY.

*B. L. PATIL.

SOHAN SINGH.

F. E. JAMES.

C. S. RANGA IYER.

NAOROJI M. DUMASIA.

*JAGAN NATH AGGARWAL.

*Subject to a minute of dissent.

MINUTE OF DISSENT.

We have signed the Report of the Select Committee subject to the following note :—

We agree that the Indian States Administration should be protected from conspiracies formed in British India in order to overawe such administration and from the formation of *Jathas* or Assemblies of men with the object of marching into a State in order to create trouble there (clauses 3 and 5). Regarding the British Indian Press we are not satisfied that the need has arisen in any way justifying a departure from the normal procedure of a judicial trial and substituting executive action therefor as is proposed in clause 4 of the Bill. Our reasons are briefly as under :—

- (a) An Act of 1922 known as the Indian States (Protection against Disaffection) Act, enacted under the certifying powers of the Governor-General, makes the law of sedition under section 124-A applicable to writings with reference to a States Administration though we owe no allegiance to the Rulers of such States. That Act therefore fully protects a Prince or a Chief as well as his Administration from malicious attacks.
- (b) We are not satisfied that there is a sufficiently widespread demand by the States Administrations for drastic and summary action of the kind contemplated.
- (c) The provisions of the Indian Press (Emergency Powers) Act, XXIII of 1931, as amended by the Criminal Law Amendment Act, XXIII of 1932, were intended for a grave emergency in British India and even in British India such emergency can no longer be said to exist.

(d) We are not satisfied that there has been sufficient experience of the working of the Indian States (Protection against Disaffection) Act, 1922, to enable us to hold that it has really failed in its object as alleged. Nor are we satisfied that objections as to undue delay and publicity which are equally applicable to other trials for similar offences under other penal laws, afford any justification for substituting executive action for the process of Courts. We hold clause 4 should be deleted.

Three of us (Sir Abdur Rahim, Mr. K. C. Neogy and Mr. Patil) are further of the opinion that clause 6 should also be deleted. That clause which is apparently based on the lines of section 144, Criminal Procedure Code, we are told, is intended mainly to authorise the District Magistrate practically at his discretion to prevent the holding of public meetings to discuss questions of general importance in relation to the Administration of an Indian State. For instance, under this clause, if enforced by notification, it would have been open to the Magistrate at Delhi to prohibit the Conference of the States People which was held here the other day. It is very generally believed that section 144, Criminal Procedure Code, has often been resorted to by the authorities to prevent the holding of *bona fide* political meetings in British India though that was never the object of section 144 and it would be setting a dangerous precedent for British India itself, if we agreed to the extension of the summary procedure of section 144, Criminal Procedure Code, to *bona fide* political meetings with reference to the affairs of an Indian State. Further there is no need for such a provision since clause 3 provides against conspiracies to overawe a State Administration and clause 5 would prevent the formation of *Jathas* for the purpose of raiding a State and creating trouble therein. We must also point out that the language of clause 6 is dangerously wide. It would indeed

enable a Magistrate to strike at many perfectly legitimate and lawful activities of a citizen besides holding public meetings.

ABDUR RAHIM.

JAGAN NATH AGGARWAL.

K. C. NEOGY.

B. L. PATIL.

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